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ABBREVIATIONS EXPLAINED.

Reports.

All. or A.	Indian Law Reports, Allahabad Series.
A. L. J.	Allahabad Law Journal.
1922 All. or 1922 A.	All-India Reporter, Allahabad.
B. R. or B. D.	Decision of the Board of Revenue, Mad. (N. R. K. Tatachariar).
Bom. or B.	Indian Law Reports, Bombay Series.
Bom. L. R.	Bombay Law Reporter.
1922 Bom.	All-India Reporter, Bombay.
Bur. L. T.	Burma Law Times.
Bur. L. J.	Burma Law Journal.
Cal. or C.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
C. W. N.	Calcutta Weekly Notes.
1922 Cal.	All-India Reporter, Calcutta.
Cr. L. J.	Criminal Law Journal.
I. A.	Law Reports, Indian Appeals.
I. C.	Indian Cases.
Lah. or L.	Indian Law Reports, Lahore Series.
1922 Lah.	All-India Reporter, Lahore.
Lah. L. J. or L. L. J....	Lahore Law Journal.
L. B. R.	Lower Burma Rulings.
L. R. (P. C.)	The Law Reporter, Privy Council Section.
L. R. (A.)	,, Allahabad Section.
L. R. (O.)	,, Oudh Section.
Mad. or M.	Indian Law Reports, Madras Series.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
L. W.	Madras Law Weekly.
M. W. N.	Madras Weekly Notes.
1922 Mad.	All-India Reporter, Madras.
Mys. L J.	Mysore Law Journal.
N. L. J.	Nagpur Law Journal.
N. L. R.	Nagpur Law Reports.
1922 Nag.	All-India Reporter, Nagpur.
O. & A. L. R.	Oudh and Agra Law Reporter.
O. C.	Oudh Cases.
1922 Oudh	All-India Reporter, Oudh.
O. L. J.	Oudh Law Journal.
P. R.	Punjab Record.
P. L. R.	Punjab Law Reporter.
P. W. R.	Punjab Weekly Reporter.
Pat. or P.	Indian Law Reports, Patna Series.
1922 Pat. or 1922 P. H. C. C.	Patna Supplement to C. W. N.
1922 P.	All-India Reporter, Patna.
1922 P. C.	All-India Reporter, Privy Council Section.
Pat. L. R.	Patna Law Reporter.
Pat. L. J.	Patna Law Journal.
Pat. L. W.	Patna Law Weekly.
R. or Rang.	Indian Law Reports, Rangoon Series.
S. L. R.	Sind Law Reporter.
1922 S.	All-India Reporter, Sind.
U. B. R.	Upper Burma Rulings.
U. P. L. R.	U. P. Law Reporter.
1922 U. B.	All-India Reporter, Upper Burma.
1922 R.	All-India Reporter, Rangoon.

Other Abbreviations.

Appl.	Applied.	Expl.	Explained.
Appr.	Approved.	Foll.	Followed.
Dist.	Distinguished.	F. B.	Full Bench.
Disc.	Discussed.	P. C.	Privy Council
Diss.	Dissented from.	Ref.	Referred to.

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SUPPLEMENT.

HINDU LAW.

HINDU LAW—*Gift—Construction—Absolute estate—Malik.*

Semble: Words in a deed executed by a senior Thakur to a junior member that "you and your *vansa varas* are *malikhs*, *mukhtiyars*, *dhanis*" of a village, confer an absolute estate on the donee. (*Mr. Ameer Ali.*) PRATAB SINGH SHEVSINGH *v.* AGAR SINGH RAISINGJI. **17 A. L.J. 522 : 21 Bom. L. R. 496 : 1 U. P. L. R. (P.C.) 39 : (1919) M. W. N. 313 : 10 L. W. 339 : 24 C. W. N. 57 : 50 I. C. 457 (P. C.) : 36 M. L, J. 511.**

[On Appeal from 28 I. C. 529 : 17 Bom L.R. 273.]

———*Impartible estate — Acquisitions—Succession to—Hindu and Mahomedan Laws—Distinction— Non-talukdar's property — Oudh Estates Act (I of* 1869), *Ss.* 8 *and* 10.

Unless there be a custom by which self-acquired properties in a Mitakshara family become part of the ancestral estate or unless it be shown that the acquirer intended to incorporate such acquisitions with the impartible estate of which he is the holder, they descend by the ordinary law of inheritance The onus of proving a custom *dehors* the general rule would lie on the person averting it. 40 I. A. 120 Ref. The Mahomedan Law however makes no distinction between ancestral and self-acquired property, and recognises no principle of differentiation in the matter of lineal and collateral succession. If therefore a custom of impartibility governs the succession to the ancestral estate, the presumption is that it attaches also to the personal acquisitions of the last owner left by him on his death. and it is for the person who asserts that these properties follow a line of devolution different from that of the estate to establish it. Where the name of the predecessor of a talukdar (a Mahomedan) was entered in the list 2 prepared under S. 8 of the Oudh Estates Act and the talukdar acquired properties subsequently, the non-talukdari property is presumably subject to the custom of devolution to a single heir This is so even if the talukdari estate is held under a primogeniture sanad. (*Mr Ameer Ali.*) MURTAZA HUSAIN KHAN *v.* MUHAMMAD YASIN ALI KHAN.

38 All. 552 : 20 M. L. T. 362 : 14 A. L. J. 1083 : 18 Bom. L. R. 884 : (1916) 2 M. W. N. 555 : 25 Cr. L. J. 1 : 19 O. C. 290 : 1 Pat. L. W. 122 : 2I C. W. N. 410 : 4 O. L. J. 8 : 4 L. W. 538 : 43 I. A. 269 : 36 I. C. 299 (P.C.) : 31 M. L. J. 804 : [On Appeal from 16 O. C. 290 : 22 I. C. 577].

———*Impartible estate—Maintenance—Right to—Junior members—Customary right—Proof of unnecessary' if judicially recognised.*

An impartible Zamindari is the creature of custom. It is of its essence that no co-parcenary in it exists. Apart therefore, from custom and relationship to the holder the junior members of the family have no right to maintenance out of it. 10 All. 272, 22 Mad 383 Rel. A custom entitling the sons of the holder to maintenance has so often been judicially recognised that it is not necessary to prove it in each case. 24 Mad. 147, Ref. There is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right 5 Cal. 259. Appr. (*Lord Dunedin.*) GANGADHAR RAMA RAO *v.* RAJA OF PITTAPUR.

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41 Mad 778 : 24 M. L. T. 276 : 16 A. L. J.833 : 28 C. L. J. 428 : 5 Pat. L. W. 267 : 20 Bom. L. R. 1056 : 23 C, W, N. 173 : (1918) M. W. N. 922 : 45 I. A. 148 : 47 I. C. 354 (P. C.) : 35 M. L. J. 392. [On Appeal from 39 Mad. 396 : 28 M. L. J, 624 : 29 I. C. 356 : (1915) M. W. N. 369.]

———*Minority and guardianship —Tesiamentary guardian—Joint family.*

The sole adult member of a Mitakshara coparcenary whether a father or manager, has no power to appoint a testamentary guardian for the co-parcenary properties of the minor co-parceners 13 M. I. A. 209 ; 25 All 407 (P. C.). Dist. ; 38 Bom 94 Dist. ; 21 I. C 848 ; 29 I. C. 475 : 40 Mad. 672 Foll. (*Ayling, Coutts-Trotter and Seshagiri Aiyar, JJ.*) CHIDAMBARA PILLAI *v.* RANGASAMY NAICKER. **41 Mad. 561 : 23 M. L. T. 266 : (1918) M. W. N. 265 : 7 L. W. 454 : 45 I. C. 905. (F. B.)**

[Also 21 I. C. 848 (Mad): 29 I. C. 475 (Mad); 40 Mad 672 : 34 I. C. 766. 39 M. L. J. 381].

———*Succession—Exclusion from—Disqualification—Personal.*

Disqualification for succession under the Hindu law is purely personal and the rights of the issue of a disqualified person not affected. (*Lord Dunedin.*) GANGDHAR RAM RAO *v.* RAJA OF PITHAPUR.

41 Mad. 778 : 35 M L J. 392 :24 M. L. T. 276 : 16 A. L. J. 833 : 28 C. L. J. 428 : 5 Pat. L . W. 267 : 20 Bom. L. R. 1056: 23 C. W. N. 173 (1918) M. W. N. 292 : 45 I. A. 148 : 47. I C. 354 : (P.C.) [On appeal from 39 Mad. 396 : (1915) M. W. N. 369 : 29. I. C. 356 : 28 M. L. J. 624,]

LANDLORD & TENANT *-Covenant for renewal —Provision for to be express—Implied from past renewals.*

Prima facie a lease for a term does not import any right to a renewal of it, On the contrary it *prima facie* implies that the lessee's right to the permises demised ends with the term. The past renewals of the lease by the lessor at the termination of each term, are acts of grace the repetition of which could not *per se* create a legal rigt to its continuance. (*Lord Atkinson.*) SECRETARY OF STATE *v.* RAJ BAI BAI. **39 Bom. 625 : 42 I. A. 229 : 19 C. W. N. 1087 : 13 A. L. J. 953 : (1915) M.W.N 563 ; 18 M. L. T. 179 : 2 L. W, 731 : 17 Bom. L. R. 730 : 23 C. L. J 1 ; 30 I. C. 303 (P.C) : 29 M. L. J. 242.**

[Reversing 13 Bom., L. R. 609 : 11 I C. 948.]

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THE CIVIL DIGEST

(1911—1923.)

Vol. III.

EARNEST MONEY.

See (1) CONTRACT ACT, S. 73.
(2) DAMAGES.
(3) T. P. ACT, Ss. 54 AND 55.

EASEMENTS ACT (V OF 1882).

———*—Scope of.*

Easements Act is a complete Code and only in places where it is not in force, the Courts rely upon English sources for the law of easements and upon justice, equity and good conscience. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA *v.* ALLEN. **34 I.C. 450= 20 C.W.N. 1188.**

———*—Scope—Limitation Act—Application.*

The Limitation Act is remedial and gives a right where there is no other right at all but it does not exclude or interfere with other titles and modes of enjoyment. 5 M. 253 ; 5 M. 226 ; 6 C. 812 ; 35 C. 851 ; 14 B. 222 ; 10 C. 214 ; 8 C. 956 ; 7 C. 432, Fol. (*Sadasiva Aiyar and Bakewell*, JJ.) MUTHU GOUNDEN *v.* ANANTHA GOUNDEN. **29 M.L.J. 685= 18 M.L.T. 476=2 L.W. 1107= 31 I.C. 528=(1916) 1 M.W.N. 113.**

———*—S. 2—Mirasi village—Right of Govt. to regulate water.*

Where a part of the source of irrigation for a ryotwari village is a Govt. tank, *Mirasdars* who have from time immemorial cultivated their wet lands with the tank water have a preferential right to irrigate from the tank over assignees of waste land from the Govt. (*Wallis*, C.J. *and Seshagiri Iyer*, J.) SECY. OF STATE FOR INDIA *v.* SRIRANGACHARIAR. **51 I.C. 734.**

———*—S. 2—Right of Government—Ryotwari proprietor.*

A *ryotwari* proprietor can claim a supply of water for irrigation of his lands from a Govt. channel. But it is for the Govt. to distribute water in any way it thinks fit. (*Abdur Rahim and Napier*, JJ.) MAHANKALI LAKSHMIAH *v.* KARNAM NARAYANAPPA. **34 M.L.J. 425= (1918) M.W.N. 276=45 I.C. 80= 23 M.L.T. 337.**

———*—S. 2—Ryotwari land—Right of Govt. to regulate water.*

EASEMENTS ACT (V of 1882), S. 4.

No one has any right to interfere with the Govt.'s exercise of its general power of distributing and limiting the supply of water for irrigation in ryotwari villages. But if the Govt. claims up water and prevents it from going to plff.'s land there is a right of suit. (*Ayling and Hannay*, JJ.) SIVASAILAM IYER *v.* RAMKRISHNA AIYAR. **26 I.C. 18= (1914) M.W.N. 788.**

———*—S. 2—Irrigation—Control of Govt. over.*

The construction and control of works and sources of irrigation is the special function and duty of the Govt. in India. 1 I.A. 364 ; 28 M. 539, Ref. (*Benson*, C.J. *and Bakewell*, J.) PAPALA NARAYANASWAMI NAIDU *v.* PENSALANI KANNIAPPA NAIDU. **(1912) M.W.N. 496=14 I.C. 261= 24 M.L.J. 36.**

———*—S. 3—Effect of—Limitation Act, Ss. 26 and 27—Central Provinces.*

S. 3 of the Easements Act repeals, so far as the Central Provinces are concerned Ss. 26 and 27 of the Limitation Act and the definition of easement contained in that Act. (*Mitra*, A.J.C.) SITARAM *v.* PETIA. **43 I.C. 962= 14 N.L.R. 35.**

———*—Ss. 4, 52—Permissive user—No question of easement arises—Bar to acquisition of right.*

Where in a suit for a declaration of a right of easement and for demolition of a certain building erected by defendant so as to infringe the right it was found that the user of the defendant's land by the plaintiffs for the purposes of procession as alleged by them was with the permission of the defendant, *Held* that no question of easement could arise, as the user of the defendant's land was permissive. (*Banerji and Gokul Prasad*, JJ.) PANNA LAL *v.* BOHRA PANNA LAL. **21 A.L.J 436= L.R. 4 A. 274=1924 All 50.**

———*—Ss. 4 and 35—Injunction—Easement—Branches over hanging—Tree growing partly on plff.'s and partly on deft.'s land.*

A person has no right to cut off the overhanging branches and the penetrating roots of a tree belonging to his neighbour when the

EASEMENTS ACT (V of 1882), S. 4.

tree is growing partly on his land and partly on his neighbour's land for many years past. (*Macleod*, C.J. *and Heaton*, J.) SOMESHVAR JETALAL *v.* CHUNI LAL NAGESHWAR.

22 Bom. L.R. 790=57 I C. 544=44 B. 705.

——— **Ss. 4 and 43**—*Right to projection.*

The definition of easement in the Act applies to a projection of eaves in a dry country as well to a country having abundant rainfall, the purpose of the eaves being only to discharge rain water. If a right to project eaves over a particular height has been acquired, the height can be raised so as not to throw increased burden on the servient tenement. (*Scott*, C.J. *and Beaman*, J.) MULIA BHANA *v.* SUN DAR DANA. **38 Bom. 1=21 I C. 352=15 Bom. L.R. 876.**

———**S. 4**—*Eaves—Overhanging.*

The possession of a *pankh* or eaves over hanging another's land is an easement and not an occupation of his property. (*Scott*, C.J. *and Chandavarkar*, J.) CHHOTA LAL *v.* MANI LAL. **37 Bom. 491=20 I.C. 246=15 Bom. L R. 551.**

———**S. 4**—*Right to bury in another's land is not an easement.*

The right to bury in another's land does not fall within the general definition of "Easement." It cannot be deemed a right imposed for the beneficial enjoyment of land. The law does not recognize also an easement by prescription created by the mere fact that dead bodies are placed in graves on the land of another and permitted to remain there for the prescriptive term. The Court will not create a new species of easement if the easement claimed constitutes a nuisance. But where the owner of the land has acquiesced in the burial of dead bodies, a Court of justice may prevent the desecration of the graves. (*Moorkerjee and Panton*, JJ.) GOPAL KRISHNA *v.* ABDUL. **66 I.C. 640=34 C.L J. 319.**

———**S. 4**—*Right of way not appurtenant to a dominant tenement is not easement.*

Private rights of way if not appurtenant to a dominant tenement, like public rights of way, are not easements. They are rights in gross and can be enforced as such. (*Newbould and Buckland*, JJ.) BALAI CHAND PAL *v.* PANCHU GOPAL SEAL. **59 I.C. 319.**

———**Ss. 4 and 50**—*Servient tenement—Reciprocal — Easement — Right of servient owner to insist on continuance of easement.*

It is not possible to acquire a reciprocal easement for the benefit of the servient tenement by the exercise of an easement by the dominant owner. The existence of an easement is only for the benefit of the dominant owner and the servient owner has no right to insist on its continuance or to claim damages on its abandonment. (*Mookerjee and Beachcroft*, JJ.) BINAL CHANDRA CHAKRAVARTY *v.* CHANDRAKANTA CHAKRAVARTI. **22 I.C. 614=19 C L J. 45.**

EASEMENTS ACT (V of 1882), S. 7.

———**Ss. 4 and 7**—*Right to gather fruits falling on neighbour's land is not an easement.*

A right to go on to a neighbour's land to gather the fruits that fall there from a portion of a tree alleged to belong to the plff. is not an easement within the meaning of S. 4 of the Easements Act. Such a right cannot be acquired by prescription. (1895) A. C. 1, Foll. (*Coutts Trotter and Ramesam*, JJ.) SARANGAPANI AIYANGAR *v.* SADAGOPA NAIDU. **43 M.L J 152=16 L W. 98=(1922) M.W.N.421=31 M.L T. 78 (H C.)=1922 Mad 398.**

———**Ss. 4 and 18**—*Easement—Artificial structures—Drying clothes, etc.—User as of right.*

Easements can be acquired over artificial structures such as flat masonry, or roofs of shops. These are lands within the meaning of S. 4. A general right of easement to use a roof as a place for setting or drying clothes or for other purposes can be acquired under the Act. User may be either by the dominant owner or by his tenants beyond the statutory period. User without permission is user as of right. (*Lindsay*, J. C.) GANESH PRASAD *v.* KHUDA BAKSH. **43 I.C. 583=21 O.C. 78.**

———**S. 4**—*Natural right and right of easement distinguished.*

The right incident to the ownership of land, in the nature of easement but not a right of easement as such, is called a natural right and is distinct from the right of easement. Where one is claimed, the other does not arise. (*Das* J.) MOHENDRA NATH GHOSE *v.* NABIN CHANDRA GHOSE. **57 I.C. 804.**

——— **S. 4.**

The right to hunt in a jungle and to appropriate the game is a right known in English Law as a right to *profit apprendre* in gross. (*Mullick and Jwala Prasad*, JJ.) MAHARAJ BAHADUR SINGH *v.* GANDAURI SINGH. **2 P.L.J. 323=39 I.C. 868=2 P.L.W. 282.**

———**S. 7**—*Natural stream — Diversion—Right to protect one's property—Extent of.*

No one has power, for the safety of his own property, to direct or interfere with a natural stream running in a natural outlet, and if he does so he will be liable in damages to any one who is injured by his act. The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property. But he cannot actively adopt such a course as might direct the mischief from his own land to the land of another person. (*Lindsay and Kanhaiya Lal*, JJ.) MOHAMMAD SAMI ULLLH *v.* MUKUND LAL. **19 A.L J. 736=3 U.P.L.R. (All.) 131=63 I.C. 980=43 A. 688.**

EASEMENTS ACT (V of 1882), S. 7.

———S. 7—*Right to discharge rain water from high land over low land—Natural right.*

Where the rain water falling on plff.'s land which is on a higher level, flows across deft.'s land which is on a lower level, the plff.'s right is a natural right (*exjure natural*), not acquired by prescription and cannot be interfered with by the deft. 1 Mad. 335; 29 Mad. 539 Ref. (*Banerji* J.) AMBICA SARAN SINGH *v.* DEBI SINGH. **24 I.C. 91 = 12 A.L.J. 685.**

———Ss. 7 and 13—*Natural right—Right to light and air—Privacy—Easement by implication—Partition.*

There is no easement for the free access of privacy. Every one may build upon or otherwise utilise his own land regardless of the fact that his doing so involves an interference with the light which would otherwise reach the land and building of another person. On the other hand, every man may open any number of windows looking over his neighbour's land, for the interference with a neighbour's privacy or with his prospect does not by itself, give the latter a cause of action, in the absence of other circumstances. If windows are opened, the neighbour may, by building on his own land obstruct the light which would otherwise reach them. Whether a grant of an easement arises by implication on a conveyance of land depends on the intent of the parties, which must clearly appear; in order to determine the intent the Court will take into consideration the circumstances attending the transaction, the particular situation of the parties and the state of the thing granted. This principle holds only where there is no express contract relating to the matter for, where there is a valid express agreement fairly made the law does not indulge in presumptions and the rights of the parties will be upheld according to the terms of such agreement; in such circumstances, no question arises as to grant of easement by implication. Where the owner of an entire tract of land or of two or more adjoining parcels employ a part thereof so that one derives from the other a benefit or an advantage of a continuous and apparent nature, and sells the one in favour of which such continuous and apparent quasi-easement exists, the easement being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. *Ewart* v. *Cochrane*, (1861) 4 Mac. H L. 117; *Wheelden* v. *Burrows*, 12 Ch. D. 31; *Bayley* v. *O.W Ry. & Co.*, 26 Ch. D. 434; *Brown* v. *Alabaster*, 37 Ch. D. 490; *Watt* v. *Kelson*, 6 Ch. A. 166; *Swan* v. *Cotton*, (1916) 2 Ch. 459, Rel. The same principle has been applied to partition of joint properties. On a severance of tenements by a partition of joint property, and in the absence of a contrary intention, expressed or necessarily implied, all such easements as are apparent continuous and necessary for enjoying any of the undivided shares when the partition was effected, pass to the co-parceners to whom such shares are respectively allotted in severalty. 14 C. 797; 26 C. 516; 8 B.H.C.R. 181; 14 B. 452; 28 M. 495. (*Mookerjee and Chotzner*, JJ.) SAROJINI DEBI *v.* KRISHNA LAL HALDAR. **36 C.L.J. 406 = 1923 Cal. 256.**

EASEMENTS ACT (V of 1882), S. 7.

———S. 7—*Water rights — Natural rights —Interference.*

Every person has a right to do anything on his own land with regard to the diversion, storage or the uses of water in any way he chooses provided that he does not allow or cause that water to go upon his neighbour's land so as to affect it in some other way than the way in which it had been affected before. A person has no right to obstruct the water of a stream except to the extent to which he has had prescriptive use. (*Richardson and Walmsley*, JJ.) ERALIJOOL TEA CO., LTD. *v.* NAGENDRO NATH. **41 I.C. 47.**

———S. 7—*Latrine on another's land—Enjoyment for a long time.*

An easement right to keep a latrine on another man's land is unknown to law and cannot be acquired by prescription. The act of the plff. was in the nature of a trespass and he might contend for a title by adverse possession but such a plea would not now be allowed. (*Mookerjee and Richardson*, JJ.) HERALAL ROY *v.* LOKENATH SHAHA. **29 I C. 863 = 19 C W.N. 864.**

———S. 7—*Flow of water—Definite channel—Absence of.*

The fact that the water, discharged from a dominant tenement flows over the servient tenement without a definite channel, cannot prevent the acquisition of an easement. 8 C. W.N. 244, Overruled. (*Jenkins, Harrington, Stephen, Mookerjee and Holmwood*, JJ.) MUNSHI MISSER *v.* BHIMRAJMAN. **40 Cal. 468 = 17 C L J. 368 = 18 I C. 824 = 17 C.W.N. 306 (F B).**

———S. 7—*Riparian rights can be acquired by easement.*

Obiter:—Even the rights of the riparian owners may be acquired by easement. (*Shadi Lal. C. J. and Le-Rossignol*, J.) BALI RAM *v.* BELA SINGH. **1923 Lah. 591.**

———Ss. 7 and 13—*Natural stream—Meaning of—Rights of riparan owners—Prescription.*

Where the water of a river during its course is largely increased in volume by percolation cannot be said to be a stream with channel. 1897 A. C. 129, Foll. Where the plffs. have been using the water for more than 20 years but not as of right they cannot be said to acquire by prescription a right to the use of such water. (*Martineau*, J.) NAGINA SINGH *v.* MALHI. **64 I.C. 158 = 3 Lah. L.J. 353.**

———S. 7—*Owner—Meaning of.*

Owner does not necessarily mean absolute owner. It also includes limited owners such as lessees or persons having derivative interest

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in the property. (*Abdur Rahim and Phillips*, JJ.) VAINYANKANDI *v.* THAYITHOTTATHIL. **42 Mad. 567 = 37 M.L.J 28 = (1919) M.W.N. 305 = 26 M.L.T. 48 = 50 I.C. 291 = 10 L.W. 87.**

———**Ss. 7, 11 (1) and 22**—*Natural right—Water brought on land for cultivation—Right to discharge on land of lower proprietor—Easement—Injunction.*

Per *Sadasiva Iyer*, J.—The term, "natural right of drainage" strictly so called covers only the right to allow rain water falling on land of a naturally higher level to drain off by surface flow along whatever lines the water could find its way on the neighbouring land. The right to drain off water brought according to the custom and usages of the country along irrigation channels upon the land may also be said to be a natural right. Per *Phillips*, J.—An owner of land can have no natural right to pass the water, which has come upon his land artificially to his adjoining land. Where the upper field is watered by an irrigation source, a right to pass such water away from the field cannot be a natural right but only a prescriptive or customary right. Under S. 22 of the Easements Act the easements must be exercised in the way least onerous to the servient owner and must at his request be confined to a determinate part of the servient heritage. (*Sadasiva Aiyar and Phillips*, JJ.) DORAISAMI MUTHIRIYAN *v.* MUTTACHI.
23 M.L.T. 210 = 44 I.C. 500 = (1918) M.W.N. 167.

———**Ss. 7 and 1**—*Riparian rights—Irrigation—Rights of* mittadar *to dam channel—Right of lower owners.*

Each upper owner in a system of connected tanks in different *mittas* or villages supplied with water by or through a permanent or artificial channel, is entitled in the flood season, to fill his tank, which is of sufficient storage capacity for the *Ayakat* and he must subject to this, allow the water to flow freely on the lower tank till the last of them is supplied. Whatever may be the means adopted to let out the surplus, the owner of the tank, in such cases, cannot increase the storage capacity of his tank beyond the capacity at the beginning which, in many cases can only be proved by the customary flow of water. (*Abdur Rahim and Srinivasa Iyengar*, JJ.) SECRETARY OF STATE *v.* PALANIYAPPA PILLAI. **22 M L T. 345 = (1917) M.W.N. 571 = 41 I.C. 24 = 6 L W. 572.**

———**Ss. 7 and 35**—*Natural stream.*

An occupier of abutting lands cannot be restrained in his exercise of his natural rights, simply because he becomes a lessee of other lands not abutting. Where the water of a stream has been used for irrigating only abutting lands, the owner of abutting lands cannot be restrained from using more than a reasonable quantity by another to whom no material diminution in supply is caused. The actual and not a mere threatened use of the water

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flowing through a natural stream to irrigate lands other than those abutting on the stream gives a right to sue. An occupier of Zemindari lands is an "owner" within the meaning of ill. (j) to the section. (*Tyabji and Spencer*, JJ.) GOPICHETTI NARAYANASWAMI NAIDU *v.* MADALA VENKANNA.
24 I.C. 685 = (1914) M.W.N. 481.

———**S. 7**—*Right to drain water—Natural right.*

The lower proprietor owes a natural servitude without claim to compensation to the higher, in respect of water naturally flowing upon it; but the higher land owner cannot exceed his natural right by sending water not going there naturally. Short of this the upper owner may interfere with the flow of water. (*Sankaran Nair and Oldfield*, JJ). SANKARAPPA NAICKAR *v.* PARI NAICKER.
38 Mad. 149 = (1913) M.W.N. 640 = 21 I.C. 62 = 26 M L J. 276.

———**S. 7**—*Riparian owner—Right to irrigate lands—Extent of.*

A riparian proprietor is entitled to use the water of the stream for irrigating his lands without causing injury to the other riparian proprietors. Erecting a dam across the bed of the river is a common method of using the water of a stream by a riparian proprietor. A riparian proprietor should not take more water than he was taking before but can use the water to raise wet crop in lands in which it was customary to raise only dry crops. (*Sankaran Nair and Abdur Rahim*, JJ.) SECRETARY OF STATE *v.* AMBALAVANA PANDARA SANNADHI.
18 I C 294 = 37 Mad 369 (Note.)

———**S. 7**—*Natural right—Right to fishery—Defendant on ownership of soil or right to occupation.*

The ownership of free natural elements, such as air and water, and of all wild animals living therein is obtained by occupancy or appropriation. It is a right incidental to the ownership of the land upon which the air or the water lies, just as much as is the right to make the silt deposited by rivers or the lava thrown up by a volcano or the rain or snow falling from the sky. (*Mullick and Ross*, JJ.) HENRY HILL CO. *v.* SHEORAJ RAI. **3 P L T 53 = 64 I.C. 348 = 1922 P. 9.**

———**S. 7**—*Easement—Benefit of, exists only for dominant tenement—No right of servient owner to insist on continuance by dominant owner.*

An easement exists for the benefit of the dominant tenement alone and the servient owner cannot insist on its continuance by the dominant owner or claim damages for abandonment. If however water running through an artificial channel on a neighbour's land has all along been flowing to the plaintiff's land it is open to the plaintiff to insist on its continuance

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on the footing of a lost grant or old arrangement. (*Bucknill*, J.) FUDU SAHU *v* SARBAN. **63 I C. 84.**

———**S. 7 (b), Illus. (1)**—*Water—Right—Surface owater—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed of adjacent streams by silting.*

The owner of higher land is entitled to discharge surface water over adjacent lower land. Where owing to the silting up of a stream into which the water thus discharged ultimately flowed, the level of the bed of the stream became higher than the adjacent lower land to the inconvenience thereof. *Held*, that dominant owners were still entitled to exercise their rights. (*Walmsley and Greaves*, JJ.) KASISWAR MUKHERJEE *v.* ANNODHA PRASAD PATRA. **41 I.C. 863=22 C.W.N. 666.**

———**S. 7 (b)**—*Flow of water—Adjacent lands—Right of owner to prevent—Easement—Injunction.*

Every one is entitled, in the absence of controlling rights of easement or servitude regarding his premises, to protect his premises against the flow of water from adjacent lands or houses. 29 M. 539; 7 M.L.T. 164 Rel. (*Robertson*, J.) JAI RAM *v.* KHAN BAHADUR. **248 P.L.R. 1912=16 I.C 797=259 P.W.R. 1912.**

———**S. 7 (b)**—*Natural right—Trees—Damage caused by shade—No liability.*

A plaintiff cannot claim damages for injury caused to the crops on his land by the shade caused by trees standing on his neighbour's land. It cannot be said that every owner of a field has the right to have the sun's rays fall on it from every possible direction. There cannot be such a right, for if it were allowed the use and enjoyment of the adjoining fields by their owners would be very largely restricted. (*Kotwal*, A.J.C.) GUMAN SINGH *v* UM RAO SINGH. **19 N.L.R. 191=1924 Nag 69.**

———**S. 7 (b), Illus. (h), (i)**—*Right to drain water on lower lands.*

Where through his own fault flood water accumulates on a man's land, his neighbour is entitled to put up bunds to protect his land. The former cannot claim a right of natural drainage and restrain the latter from putting up the bund. (*Duckworth*, J.) MOKSODALI *v.* MA HLI. **1 Rang. 427=1924 Rang. 86.**

———**S. 7, Illus. (c)**—*Lands adjoining each other on different levels.*

Where plffs. land is on a level higher than the defts. adjoining land, it is not open to the defts. to build a bund so as to obstruct the flow of the water naturally flowing thereto. The defts. must allow the water to pass on through their land and then dispose of it in the way they think best. The question is not one of

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easement but of a right ancillary to property. (*Stephens and Mulick*, JJ.) RAMADHIN SINGH *v.* JADUNANDAN SINGH. **27 I.C. 268=19 C.W.N. 54.**

———**S. 7, Illus. (g)**—*Riparian rights—Extent of.*

Having regard to the necessities of a tropical agricultural country like India, Indian Courts should be liberal in recognising irrigation rights as natural rights of as strong a character as any other, provided the lower riparian owners are not injured and the equality and the wide participation of the benefits of the natural stream are not interfered with. In India a riparian owner must be confined to the land which is on the bank of the stream or which extends from that bank to a reasonable depth inland. A depth of more than half a furlong would usually be unreasonable. The right of a riparian owner is not restricted to lifting up of water from a natural stream and carrying it at once to the land but extends to the temporary storage of water in wells before carrying it on to the irrigated lands. (*Sadasiva Aiyar and Phillips*, JJ.) EMANI LAKSHMINARASU *v.* SECRETARY OF STATE. **34 M.L.J 223=7 L.W. 1=43 I.C. 113=23 M.L.T. 235.**

———**S. 7, Illus. (g)**—*Surface water—Right to collect and use—Right to let water on lower land—Rights of servient owner.*

Every land-owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such use as he may desire. He may also allow it to flow away in the usual course of nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing. He cannot do this, however by an artificial discharge upon his neighbour's land unless he has acquired an easement which his neighbour is bound to submit to. If he should acquire such an easement the owner of the servient tenement acquires no reciprocal rights as against the owner of the dominant tenement with regard to the flow of surface water, that is, water not passing through a defined channel. The owner of the servient tenement cannot compel the owner of the dominant tenement to continue the exercise of his right even where the right has been exercised uninterruptedly for over 20 years, and even if its exercise should be beneficial to the servient tenement. *Arkright* v. *Gill*, (1839) M. & W. 203; *Don* v. *Shrewsry Ry. Co.*, L.R. 6 Q B. 578; 2 C. L. R. 141, Ref. (*Miller*, C.J. *and Mullick*, J.) MT. SARBAN *v.* PHUDO SAHU. **4 Pat. L.T. 81=2 P. 110=(1922) Pat. 306=4 U.P.L.R. (P.) 105=1923 P. 65.**

———**S. 7, Illus. (h), (i) and (j)**—*Riparian owners—Flow of water through natural channel—Obstruction by silt—Riparian owner not bound to clear up—Contributory negligence.*

If from natural causes, a river or channel passing through A's land silts up with result that more water is thrown into another river or channel running through B's land and B

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blocks up the river or channel on his land so as to throw the water back on to and flood A's land, A cannot be held to have contributed to the result. An owner of land through which a river or other natural channel flows is not bound to clean it though he is bound within certain limits as between himself and other riparian owners not to do anything which will obstruct the flow of water or materially interfere with their rights. (*Karamat Husain and Chamier*, JJ.) BALDEO SINGH *v.* JUGAL KISHORE. **33 All. 619 = 10 I C 564 = 8 A.L.J. 640.**

———S. 7, Illus. (h) and (i)—*Distinction between.*

In the former the water must flow in a natural stream, in the latter their course must be regulated even though there is no defined channel. The one deals with the developments of a stream, the other with the beginnings. Where a stream, having a continuous flow at the beginning subsequently diverts itself, it is a natural stream and the owner of the land below cannot put a dam across it to the damage and injury of upper owners because it will be an infringement of a natural right, as declared in S. 7, ill. (*h*). (*Wallis, Offg.*, C. J. *and Seshagiri Aiyar*, J.) GOPALA KRISHNA YACHENDRULLA VARU *v.* SECRETARY OF STATE. **16 M L.T. 597 = 2 L.W. 45 = 26 I.C. 800 = 28 M.L.J. 98.**

———S. 7, Illus. (h)—*Natural rights—River obstruction by dam.*

No riparian owner is entitled to obstruct a public river. (*Kanhaiya Lal*, A.J.C.) JAGAN NATH *v.* CHANDRIKA PRASAD.
21 Cr. L.J. 55 = 54 I.C. 407 = 6 O.L J. 616.

———S. 7, Illus. (h)—*Right to obstruct free flow of water from higher land.*

Where there is a competition between the rights of the owner of land on a higher level to allow water to pass in its natural flow without obstruction and the rights of the owner of the lower land to use it as he eases the latter's right must give way to the former especially where its free use would obstruct the passage of water and would cause damage to the *abadi*. In such a case the owner of the lower land cannot erect a bund to obstruct the flow of water. (*Daniels*, A.J.C.) KANHAIYA LAL *v.* MUNNA.
32 I.C. 128.

———S. 7, Illus. (h) and (j)—*Riparian owner—Rights of—Erection of dam across a river, when actionable—Rights of riparian owners, relative not exclusive—Injunction.*

Riparian owner has a right to the usufruct of the river or stream which passes though his land. This is not an absolute or exclusive right to the flow of the water but subject to the similar right of all the proprietors of the banks on each side to the reasonable enjoyment of the same. A riparian owner has a right to use and consume the water for irrigating the land abutting a natural stream provided that he would not thereby cause a material injury to other like owners. (*Chamier*, J.C.) SHEO NARAIN SINGH *v.* CHANDRABHAL.
10 I.C. 181.

———S. 7, Illus. (h)—*Use of water for irrigating or manufacture—Extraordinary user, what is.*

The right of a riparian owner to use the water of a stream either for irrigation or manufacture is an extraordinary use of water and is subject to the condition that the use of the water by other proprietor should not be affected. (*Miller*, C.J. *and Adami*, J.) MAHABIR SAHU *v.* RAM SARAN SAHU. **51 I.C. 949.**

———S. 7, Illus. (h)—*Irrigation—User—Prescription.*

Riparian owners have a natural right to use the water of a natural streamlet for irrigation so long as that use is reasonable. It is not rightful to a higher riparian owner to use the water for irrigation in such a way as to interfere with an easement acquired by prescription by a lower riparian owner. (*Imam*, J.) MAHABIR SAHU *v.* RAM SARAN SAHU.
44 I.C. 19.

———S. 7, Illus. (j)—*Riparian owners—Extent of right.*

A riparian proprietor, can only take for the purpose of irrigation so much water as is necessary without materially diminishing what is allowed to descend. The quantity of water that can be abstracted and used without infringing that essential condition must in all cases be a question of circumstances, depending mainly upon the size of the stream and the proportion which the water bears to entire value. (*Mullick and Jwala Prasad*, JJ.) HARI SINGH *v.* KANCHAN MAHTO. **52 I.C. 276 = 20 Cr. L.J. 612.**

———S. 7, Illus. (j)—*Riparian right—Artificial stream connected with natural stream—Grant of right—One riparian proprietor to another riparian proprietor—Right to divert water outside tenement.*

Riparian proprietors can permanently divert water for agricultural purposes and irrigation. The question is whether the use was reasonable having regard to the custom of the adjoining country. Where there is no sufficient water for all to use freely, each riparian proprietor should take only his proportionate share determined by the number of such owners and the area for which water is supplied by each. The right of a riparian owner to irrigate is not a right to easement properly so called. The statement in 28 Mad. 236 that the owner of a tenement adjoining a natural stream has no right to divert water to be placed outside the tenement goes too far. Where a riparian owner has made a diversion for the irrigation of his own tenement, the surplus water which would otherwise be wasted may be taken in a channel by another riparian owner to irrigate his land. The policy of the law should be to encourage and protect all beneficial use of the

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water. Where a riparian proprietor had by reason of long user since 1884, the right to divert water in the natural stream for filling his reservoir for irrigating his lands and had granted a portion of his right to this water to B another riparian proprietor and where B's right was obstructed in 1911. *Held*, that a suit instituted in 1915 was not barred by limitation. The obstruction whether the stream had continuous flow or not, is a continuing wrong within S. 23, Lim. Act. The incidents of a natural stream would also apply to an artificial water course supplied with water from a natural stream and the riparian proprietors of the artificial course would have the same rights as if the water course was a natural stream. (*Chapman and Jwala Prasad*, JJ.) MAHANTHA KRISHNA DAYAL GIR *v.* MT. BHAWANI KOER. **3 Pat L.W. 5 = 43 I.C. 235 = 3 Pat. L.J. 61.**

——S. 8—*Easement—Lost grant.*

Where the *zamindar* has been using the water of a channel for irrigating his lands from the time of the permanent settlement, the Court may presume from the long possession and enjoyment a right to use the water free of charge. Though an actual grant of an easement is not discovered or proved, it will be presumed. (*Lord Shaw*). SECRETARY OF STATE *v.* MAHARAJA OF BOBILI.
46 I.A. 302 = (1919) M.W.N. 778 = 37 M.L.J 724 = 18 A.L.J. 1 = 11 L.W. 204 = 2 U.P.L.R. (P.C.) 33 = 54 I.C. 154 = 24 C.W.N. 446 = 27 M.L.T. 1 = 22 Bom. L.R. 498 (P.C.)

——S. 8—*Lost grant—Presumption from long user—Way of necessity—Inconvenience.*

Where it is found that the plaintiffs have used a path-way, without interruption, peacefully, publicly and as of right, it may be presumed that the user had a lawful origin although the circumstances relating to the origin of this user may not be known. It may be presumed in such a case that the origin is traceable to a lost grant. As regards easement of necessity the general rule is that there cannot be such an easement in respect of a right of way, if there is an alternative route or way. But where the alternative route is extremely inconvenient, there may exist an easement of necessity in respect of a more convenient path-way. (*C. C. Ghose and B. B. Ghose*, JJ.) KALI PADA BOSE *v.* FANI BHUSAN ROY. **1924 Cal. 363.**

——S. 8—*Acquisition of—Finding as to.*

The mere finding that a parnala is old is no finding in law that easement has been established with respect thereto. (*Wilberforce*, J.) AHMED BAKHSH *v.* PALI. **66 I C 922 = 3 Lah. L.J. 68.**

——S. 8—*Public cannot acquire by prescription—Dedication.*

The public as such cannot acquire the ownership of immoveable property or an easement on such property by prescription. But the user

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by the public may be evidence of a dedication. A dedication to be valid must be to the public at large and not to any section of it. (*Oldfield and Ramesam*, JJ.) USSAM KASIM SAIT *v.* SECY. OF STATE. **44 M L.J 638 = (1923) M W N. 315 = 17 L W. 610 = 47 Mad. 116 = 1923 Mad. 624.**

——S. 8—*Easement—Payment of consideration for.*

An easement right can be conferred by the owner of the servient tenement for cash consideration and whether it takes the shape of a sum paid in cash once for all or paid from time to time, cannot make any difference in the legal nature of the right conferred on the owner of the dominant tenemant. (*Sadasiva Aiyar and Hannay*, JJ.) CHENGALVALA *v.* MADAPATI.
(1915) M.W.N. 37 = 27 I.C. 920 = 2 L.W. 27.

——S. 8—*Easement—Long user—Right of way.*

Uninterrupted enjoyment to raise a presumption of right, must have been acquiesced in, by the owner of the servient tenement where from continued user the Court is asked to presume a grant of a right of way. Knowledge of such user on the part of the servient owner is an essential condition to the acquisition of an easement. 10 Cal. 214 Rel. (*Drake-Brockman*, J.C.) RAMCHANDRA RAO *v.* VENKATRAO. **54 I.C. 936.**

——S. 8—*Easement—Lost grant.*

The presumption of lost grant is allowed only when the enjoyment of easement cannot be otherwise accounted for. (*Walmsley and Newbould*, JJ.) BANWARI BULLAR ROY *v.* RASH BEHARY ROY. **50 I C. 933.**

——S. 8—*Creation of easement.*

A right of way can be created by a verba agreement. (*Maung Kin*, J.) GUM SONE *v.* CASSIN DALLA. **9 Bur. L T. 222 = 34 I.C. 95 = 9 L.B.R. 24.**

——S. 11—*Acquisition of easement right by tenant—Grant—User—Right to take water.*

Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor he may claim a right of easement based on immemorial user, as there is no reason why an owner of land should not grant any privilege he pleases to his tenant. Where the enjoyment of a right to take water from the landlord's tank was continued uninterrupted for a long series of years such enjoyment should be attributed to a legal origin and the Court should presume a grant of an agreement. A tenant can establish his right to irrigate his field from his landlord's tank by proof of open and continuous user from time immemorial. 29 C. 363; 38 M.L.J. 28; 6 C. 394; 4 C. 633; 30 C. 281 Rel. If the user of the easement had actually commenced before the property over which it was claimed passed into the possession of the lessee, the mere fact of the intervention

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of such tenancy should not be sufficient to defeat the right acquired by the lapse of time unless, indeed, it is further shown that the landlord, up to the time he granted the lease was in ignorance that any such right was claimed. (*Mookerjee and Chotzner, JJ.*) TINKARI PATHAK *v.* RAMGOPAL PATHAK.
36 C L J. 161 = 50 C. 356 = 1923 C. 8.

——S. 12—*Tenant's enjoyment as of right enures to landlord's benefit.*

Tenants in the dominant tenement enjoying an easement as of right, acquire it for the landlord. (*Chatterjee, J.*) MADAN MOHAN *v.* SASHI BHUSAN, **31 I C. 549 = 19 C.W.N. 1211.**

——S 12—*Landlord and tenant—Right to irrigate from landlord's tank—Acquisition of.*

A tenant can acquire by prescription the right to irrigate his field from the landlord's tank by open and continuous user. 4 C. 633; 30 C. 781, Rel. (*Holmwood and Chapman, JJ.*) BABUJAN *v.* RAMADDI SHEIKH. **18 I.C. 897.**

——S 12—*Tenant having permanent interest in the land—Prescription on other lands of lessor.*

A tenant of land having a permanent tenancy cannot acquire an easement by prescription in other lands of his lessor. 29 Cal. 303, Foll. (*Spencer and Krishnan, JJ.*) BASAVENAGUDI NARAYANA KAMITY *v* LINGAPPA SHETTY.
38 M L J. 28 = 26 M L.T. 439 = 54 I.C. 943 = 11 L.W. 34.

——S. 13—*Easement of necessity—Meaning.*

Easement of necessity is an easement without which property cannot be used at all, and not one merely necessary to its reasonable enjoyment. *Held*, that on a partition of common property, the deft. could not claim an easement of necessity in respect of the well allotted to one sharer. (*Richards, C.J. and Banerjee, J.*) GADDAR *v.* KALLA.
17 A L J. 672 = 50 I.C. 646 1 U.P.L.R. (H.C.) 56.

——S. 13—*Easement of necessity—Acquisition.*

No right of way by easement can be acquired by a person who builds an *osara* on another man's land even though with his acquiescence and in spite of a decree of Court establishing that the *osara* had been built with the consent of the owner. (*Banerji, J.*) ARTHUR BARBER *v.* BADRI NARAIN RAI. **9 I.C. 813.**

——S. 13—*Easement of necessity.*

Easement of necessity means an easement absolutely necessary for the use of the dominant tenement and not merely one necessary for the more convenient enjoyment. (*Knox and Karamat Husain, JJ.*) SUKHDEI BIBI *v.* KIDARNATH. **33 All. 457 = 9 I C. 628 = 8 A.L.J. 280.**

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—— —— Ss. 13 and 47—*Easement of necessity—Easement—Extinguishment of—Right to take water from another's well—Dominant owner rebuilding well with permission—Fresh grant.*

The defts. had ancient right of easement to take water from a well in the plff.'s land; but that easement became extinguished by non-user for a period more than twenty years. The defts. later on repaired the well at their own expense with the permission of the plff. in order to irrigate their land and began to use the water for the purpose The plff. sued to restrain the defts. from using the water. *Held*, that the easement was not one of necessity, but an ordinary easement liable to be extinguished by non-user for more than twenty years under S. 47. The plff. practically granted a fresh easement to the defts. (*Shah and Hayward, JJ.*) ANANTA MURARAO *v* GANNU VITHU SURULKAR. **22 Bom L.R. 415 = 57 I.C. 145 = 45 Bom. 80.**

—— S. 13—*Severance of tenement—Transference of a portion—Easement of necessity.*

Where the owner of two tenements or of one tenement divided into two parts, transfers one part he puts an end by contract to the relation which he had himself created between the land sold and the land retained. He discharges the land so sold from any burden imposed upon it during his joint occupation; the condition of such land is thenceforth determined by the contract of alienation and not by the previous user of the former common owner during his common ownership. The question arises whether the defts. have easement of necessity because, where a man disposed of part of his land and those parts afford an accommodation will, upon severance, ripen into an easement, if it be such as to be absolutely necessary for the enjoyment of the part retained and the accommodation be such that it is capable of constituting the subject-matter of an easement. Where an owner grants part of his land and retains other part himself, although the grantee may be in a more favourable position than the grantor so far as the grantee may claim that "all easements of necessity" without which no enjoyment at all would be possible should be raised be implication in favour of the part retained. (*Mookerjee and Panton, JJ.*) TUSTEE MONDAL *v.* KENARAM MONDAL.
65 I.C. 22 = 34 C.L J. 518.

——S. 13—*Extent and nature of an easement of necessity.*

An easement of necessity is one which the law creates according to the doctrine of implied grant in a particular case. It is one without which the dominant tenement cannot be used at all. A right of way of necessity ceases if the dominant owner can approach the place through his own land. (*Mukerji, A.C.J. and Fletcher, J.*) ABHOYA CHANDRA GHOSH *v.* RAI KUMAR GHOSH. **60 I.C. 504.**

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———S. 13—*Easement of necessity—Partition—Presumed grant.*

As a right of easement of necessity arising out of a severance by partition arises from a presumed grant, no grant can be presumed where the rights of parties have been definitely settled in a partition suit. (*Newbould*, J.) SIBNATH SAHA *v.* MOHESH CHANDRA SAHA. **59 I C. 89.**

———S. 13—*Easement — Right of way—Long enjoyment—Severance of tenement.*

Where the owner of one of two tenements originally held by a common owner, claims a right of way over the other tenement, *held*, that having regard to the enjoyment of the right of way for twenty years, there was a grant of the right of way to the plff. at the time of the severance of the tenements (*Fletcher and Walmsley*, JJ.) AUGRAHIT NAPIT *v* NABNATANNESSA BIBI. **49 I C. 798=29 C L.J. 51**

———S. 13—*Right of way—Grant implied on severance in cases of continuous easement.*

Where two tenements had at one time belonged to the same person the Court can presume an implied grant from facts proved notwithstanding that the right claimed was a right of way along a path which was formed into a road though neither paved nor metalled and which appeared to have been permanently attached to and for the use of the dominant tenement. Assuming that the path came into existence after the severance, the fact that for about sixty years since, the tenant in possession of the dominant tenement had been using the path was sufficient to justify the Court in inferring that user had its origin in a grant not as a matter of legal presumption but as an inference of fact. On a severance of property a grant by the owner of one of the several portions to the owner of the other can be presumed. (*Jenkins*, C.J, *and Chatterjee*, J.) THAKUR MADAN MOHAN CHAKRABARTY *v.* SASHI BHUSHAN MUKHERJI. **31 I.C. 549= 19 C.W.N. 1211.**

———S. 13—*Easement of necessity—Use of way.*

The fact that it is absolutely necessary for a person to use a way does not constitute an easement of necessity. (*Holmwood and Chapman*, JJ.) RAM GOPAL SEN *v.* ABHOYA CHARAN GHOSH. **26 I.C. 486.**

———S. 13—*Easement of necessity—Nature.*

An easement of necessity is an easement not merely necessary for the reasonable enjoyment of the dominant tenement, but one without which that tenement cannot be used at all. There is ordinarily no reservation by implication of easement in favour of the grantor except in the case of an easement of necessity. (*Mookerjee and Holmwood*, JJ.) CROWDY *v.* REILLY. **17 I.C. 966=16 C.L.J. 417.**

———S. 13—*Discharge of water through drainage in common Courtyard—Partition of.*

EASEMENTS ACT (V of 1882), S. 13.

Plff. and deft. owned a common courtyard. Before partition of the courtyard, plff. had the right to pass his water through the drainage which existed in the yard. *Held*, that the onus lay on the deft. to show that the right which plff. possessed prior to the partition had been extinguished by some agreement or rule of law. The mere fact that plff. had acquired another tenement through which he could pass his water did not deprive the easement in question of the character of an easement of necessity. (*Shadi Lal*, J.) BUTA SINGH *v.* LALLA. **53 I.C. 584=101 P.R. 1919.**

———Ss. 13 and 42—*Easement of necessity—Meaning of—Extinction of easement.*

Easement of necessity is one without which the tenement cannot be used at all and not merely one which is necessary for its more convenient enjoyment. An easement which ceases to be beneficial to the dominant owner might become extinguished. 33 All. 461, Ref. (*Broadway*, J.) JAI KISHEN DAS *v.* DIN MUHAMMAD. **50 I C. 756.**

———S. 13—*Severance of tenements.*

Where two houses situated on opposite sides of a land were connected by a bridge which had been destroyed and which plff. wanted to rebuild but the deft. objected and the Municipality also refused permission, the re-building of the bridge could not be allowed as the houses had passed to different persons. (*Kensington*, J.) MANOHAR LAL *v.* DHANPAT RAI. **9 P.L.R. 1911=9 I C. 402=81 P.W.R. 1911.**

———S. 13—*Easement of necessity—When can be claimed.*

A person cannot claim a right of way on the ground of convenience if he has other means of access available. An easement of necessity is an easement without which the property sold could not be used at all, and not one merely necessary for the more convenient enjoyment of the property. An easement of necessity contemplates that there must be an absolute necessity, not removeable by any thing, which the dominant owner can be reasonably expected to do before the law will compel an adjacent proprietor to submit to so detrimental a right as an easement on his land imposed against his will 15 A. 270 : 33 A. 467 ; 19 B. 79 ; 28 M. 495, referred to. (*Kanhaiya Lal*, J.C.) KUNJ BEHARI *v.* BHUTA. **9 O. & A L.R 381= 1923 Oudh 250.**

———S. 13 (e) and (f)—*Right of easement after partition.*

Clauses (*e*) and (*f*) of section 13 must not be confused. Under cl. (*e*) plaintiff has to prove that the easement claimed was necessary for the enjoyment of the property allotted to him by partition. Under cl. (f) he has to prove that the easement was apparent, continuous and necessary for enjoying his share as it was enjoyed when the partition took effect and that no different intention was expressed or necessarily implied in the partition. There is no right of

EASEMENTS ACT (V of 1882), S. 13.

easement after partition on the mere ground that the easement is necessary for enjoying the share as it was enjoyed. (*Ashworth*, A J.C.) BRIJ MOHAN LAL *v.* CHANDRIKA SINGH.
25 O.C. 251 = 1923 Oudh 57.

——**Ss. 13 and 28**—*Easement of necessity —What is.*

An easement of necessity arises only when the property cannot be used at all without the easement and not merely when it is necessary for reasonable enjoyment. (*Jwala Prasad*, J.) DAROGA LAL *v.* DEVI LAL.
48 I.C. 670.

——**S. 13**—*Easement of necessity—When can arise.*

An easement of necessity cannot arise in any other way than on severance of tenements. (*Saunders*, J.C.) MAUNG SHWE *v.* MA THET.
46 I.C. 327 = (1918) 3 U B.R. 65.

——**S. 13 (a)**—*Easement of necessity—Adjoining house owners — Right to go to neighbour's land to repair wall.*

A house owner in order to repair his wall on his neighbour's side of the premises can go to the other side of the wall on the land of his neighbour. The right is analogous to a necessary easement. But the easement does not extend to going over the neighbour's roof for that purpose. A person is also entitled to enter his neighbour's house or land to protect his eaves which project over the neighbour's house. 15 M. 286, Ref. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) BHAGAVATULA SUBRAMANYA SASTRI *v.* BHAGAVATULA LAKSHMINARASIMHAM.
16 I C. 893.

——**S. 13 (b)**—*Easement of necessity—Existence of vents—Continuous and non-continuous—Distinction.*

The existence of vents through which adjoining lands were being irrigated is evidence of an apparent, continuous and necessary easement which passes to the transferee under S. 13 (*b*) of the Easements Act. An act done for the proper enjoyment of an easement such as closing the vents after irrigation or in the course of the enjoyment of an easement which is continuous would not render the easement a non-continuous easement. (*Devadoss and Coleridge*, JJ.) MORLA GANGULU *v.* THATA JAGANNATTAM.
46 M.L.J. 724 = 1924 M. 108.

——**S. 13 (3) (d)**—*Easement of necessity —Doors—Drains.*

Defendants closed, by staking bricks, 3 doors appertaining to a house and stopped the flow of water through a drain which had existed for a number of years. The keeping open of the doors was found not absolutely essential for the enjoyment of the premises or for getting sufficient light and air. *Held*, that the plffs. could not sue in respect of the doors but as regards the drain, since there was no other drain in the plff.'s house and no outlet for flow of water from the kitchen, the defts. could not obstruct

EASEMENTS ACT (V of 1882), S. 15—Burden of Proof.

it. (*Banerjee and Rafique*, JJ.) BISHAMBHAR NATH *v.* JAGANNATH PRASAD.
29 I C. 693.

——**S. 15**—*See also* LIMITATION ACT, S. 26.

——**S. 15.**

BURDEN OF PROOF.
DEFENCES.
EASEMENT AGAINST GOVERNMENT.
ENJOYMENT.
MODE OF ENJOYMENT.
NATURE OF OBSTRUCTION.
NATURE OF RIGHT.
PART ACQUISITION.
RIGHT OF WAY.
WHAT RIGHT CAN BE ACQUIRED.
WHO CAN ACQUIRE.

Burden of Proof.

——**S. 15**—*Burden of proof—Easement—Acquisition—Onus.*

The onus of proving that a right of way has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for 20 years, lies upon the person asserting the right. (*Knox*, J.) GANGA SAHAI *v.* SHIB CHARAN.
25 I.C. 499.

——**S. 15**—*Burden of proof—Right of way —Abandonment—New way.*

S. 15 (1) renders it impossible to acquire a statutory prescriptive title to an easement unless and until the claim thereto has been contested in a suit. So where a right of way though a particular passage which has been used for over 20 years is abandoned and another passage has been adopted for about 17 years prior to the institution of the suit no right of way is established because the old passage had not been used within two years next before the institution of the suit and the new passage had not been used for 20 years S. 15 (1) applies both to continuous and discontinuous easements. (*Chamier*, J.) SULTAN AHMAD *v.* WALLIULLAH.
17 I.C. 22 = 10 A.L.J. 227.

——**S. 15**—*Burden of proof—Right to dam Channel—Prescription.*

A right to dam a channel against the will of the owner of the adjacent land can only be a right by user or prescription and it is incumbent on the plaintiff if he claims any particular right, to prove that he is entitled to it. The question in each case must be, what is the exact nature of the right which is shown by the evidence to have been acquired by the party? (*Phillips and Devadoss*, JJ.) HOTA VEERABHADRAYYA *v.* VENKATAKRISHNA RAO.
(1923) M.W.N. 454 = 18 L.W. 404 = 1923 Mad. 675.

——**S. 15**—*Burden of proof—Government —Claim against—Limitation.*

The words 'belongs to the Govt.' in S. 15 refer not to the time of the suit but to the duration

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EASEMENTS ACT (V of 1882), S. 15—Burden of Proof,

of enjoyment. When after 40 year's enjoyment against the Govt., the latter transfers the land to a private person, the easement in order to become absolute must be enjoyed as against the transferee for a further period of 20 years. The period of 20 years must be computed from the time when the transfer was made to a private person. (*Ayling and Phillips*, JJ.) SRINIVASA UPADYA *v.* RANGAMMA BHATTA. **41 Mad. 622=45 I.C. 98=34 M.L.J. 396.**

——— **S. 15**—*Burden of proof—Acquisition by prescriptions.*

Where it is a question of acquisitions of an easement by prescription, the burden lies entirely on the plff. to prove 20 years' enjoyment, and not mere possession for 12 years and then say the onus is shifted on to the deft. (*Sadasiva Aiyar and Moore*, JJ.) RANGAPPA NAICKER *v.* APPALA RAJA. **33 I.C. 503.**

——— **S. 15**—*Burden of proof—Suit against Govt.*

If the plff. proves 30 years' possession, the Govt. must prove that he had no possession within 60 years. (*Benson and Sundara Aiyar*, JJ.) ALAGASINGA BATTAR *v.* TALUQ BOARD, RAJAHMUNDRY. **16 I.C. 626=12 M.L.T. 159.**

Defences.

——— **S. 15**—*Defences.*

When a right has begun to run under S. 15 and the servient holder sues to put an end to it, the deft., cannot plead in bar of it art. 32 of Lim. Act. When the deft. has a right of support, from the plff.'s wall abutting on the deft.'s property, for a roof of his adjoining house, it is an encroachment of that right if the deft. raises his wall and erects upon it another thatch resting on the plff.'s wall. The limit of a party's right of support must be determined by his actual enjoyment up to the date of the encroachment complained of by the opposite party. (*Walsh*, J.) JADDU RAM *v.* KANHAIA RAM. **33 I.C 90.**

——— **S. 15**—*Defence — Obstruction—Light and air—Remedy—By injunction—Cities and villages—No difference—Defences that are not open.*

If a man's ancient lights be interrupted it is no answer to say that he can provide other sources of lights for himself by making changes in his own tenement: nor that deft. is willing to provide fresh light for him in another way. Where a party causes injury to another he cannot object to appropriate relief being granted to his opponent on the ground that he would suffer serious injury by being compelled to undo mischief. There is no difference in the application of the law as regards interference with ancient lights to builders in cities and elsewhere. (*Benson and Sundara Aiyar*, JJ.) MUTHUKRISHNA AIYAR *v.* SOMALINGA MUNI. **36 Mad. 11=21 M.L.J. 742=10 M.L.T. 121=11 I.C. 642=(1911) 2 M.W.N. 89.**

EASEMENTS ACT (V of 1882), S. 15—Enjoyment.

Easement against Government.

——— **S. 15**—*Easement against Government.*

A plff. claiming a right of easement against Govt. must prove sixty years peaceful and uninterrupted user and the rule of law that the burden of proof is shifted on to Govt. if the plff. proves possession for a sufficient number of years is not applicable if the plff. fails to prove the completion of even the prescriptive period necessary against a private individual. Case law discussed. 19 M. 165; 33 M. 1; 33 M. 173; 33 M. 362; Dist, (*Olafield and Tyabji*, JJ.) NAGARAJA PILLAI *v.* SECRETARY OF STATE. **26 I.C. 728=39 Mad. 804.**

Enjoyment.

——— **S. 15**—*Enjoyment—Right by prescription—Irrigation—Interruption.*

The enjoyment necessary to qualify for a right of easement is something different from actual user. In order to establish a right to an easement, the enjoyment of it must continue for twenty years; but in the case of discontinuous easements, this does not mean that the actual user is to continue for the whole period of twenty years. On the contrary, there may be days and weeks and months, during which the right may not be exercised at all and yet during all those days and weeks and months, the person claiming the right may have been in full enjoyment of it when necessary: 30 C. 1077, Foll. Where the water of the plaintiffs' well was always used for irrigating the defendant's lands and there was user by the defendant whenever it was necessary for a period of more than twenty years, the right to irrigate from the well would be deemed to have been substantially enjoyed for the requisite period. (*Kanhaiya Lal*, J.) SRI RAM *v.* MANI RAM. **21 A.L.J. 569=L.R. 5 A. 24=1924 All. 97.**

——— **S. 15** — *Enjoyment — 20 years—How reckoned.*

To establish a right under S. 15, twenty years of uninterrupted user must be shown. (*Richards and Tudball*, JJ.) KEDAR NATH *v.* SOHAN LAL. **23 I.C. 405=12 A.L.J. 693.**

——— **S. 15**—*Enjoyment—Two years next before suit—Right of way—Period of user.*

The period of user must be twenty years or more ending within two years before the institution of the suit wherein the claims to which such period relates is contested. (*Richards*, C.J. *and Banerjee*, J.) MUHAMMAD MAROOF *v.* SULTAN AHMED. **24 I.C. 126=12 A.L.J. 415.**

——— **S. 15**—*Enjoyment— Immemorial user —Evidence.*

No minimum limit of time can be laid down to justify an inference of immemorial user. The question whether such an user is established depends on the circumstances of each case. In the particular case a user of thirty years was considered sufficient to justify such

EASEMENTS ACT (V of 1882), S. 15—Enjoyment.

an inference. (*Shah and Crump*, JJ.) RAMBHAI DABHAI *v.* VALLUBHAI JHAVERBHAI.
45 Bom. 1027=62 I C. 65=23 Bom. L.R. 422.

——S. 15—*Enjoyment—Peaceable.*

Peaceable enjoyment means one without interruption or opposition by the servient owner, sufficient to defeat the enjoyment. The obstruction must find expression in something done on the servient tenement itself. Mere protest does not amount to such obstruction. (*Scott*, C J., *and Hayward*, J) BAI KURAVAHAI *v.* JAMSEDJI RUSTUMJI DARUVALA.
49 I.C. 963=21 Bom. L.R. 709.

——S. 15 — *Enjoyment — Waste land—Acquisition of right over.*

The mere fact that the land is waste does not necessarily show that no right can be acquired over such land. If that were so, the right of user over almost every pathway in the mofussil would be lost, inasmuch as almost every pathway lies over waste land. 18 C.W.N. 735, Ref. In determining the question whether an user of way over waste land was as of right or not, the Court would have to consider the character of the land, the relation between the parties and the circumstances under which the user took place. 8 C.W.N. 359, Ref. (*Chatterjee and Panton*, JJ) MAHOMED NURAL HAQ *v.* BAKSU MANDAL. **66 I C. 809**

——S. 15 — *Enjoyment for 20 years peacefully and openly—Lim. Act, S. 26.*

If an easement has been enjoyed for the statutory period peaceably and openly as of right without interruption the right becomes absolute under S. 26, Lim. Act. (*Mullick and Walmsley*, JJ.) GIRISH CHUNDER CHOWDHURY *v.* KUNJU BEHARI KOWAR.
26 I C. 781.

——S. 15—*Enjoyment—Long user—Presumption of lawful origin.*

A long and uninterrupted user for a long series of years leads to the inference that the user had been as of right and that the right had a lawful origin. (*Wallis*, C.J. *and Phillips*, J) SWAMINATHA MUDALI *v* VELU MUDALI.
20 M.L.T. 544=(1916) 2 M.W.N. 192=33 I C. 749=4 L.W. 128.

——S. 15—*Enjoyment—Two years next before suit—Prescriptive right—Creation.*

A prescriptive right can be acquired only if the enjoyment of the easement ended "before the beginning of the three years next" before the suit was instituted. Enjoyment for twenty years under the prior Lim. Acts before the Easements Act of 1882, came into force, will not be enough, as it would not be enjoyment for two years next before the suit was instituted within S. 15. 29 M.L.J. 685, Foll. (*Sadasiva Aiyar and Moore*, JJ) RANGAPPA NAIKER *v.* APPALA RAJA. **33 I.C. 803.**

——S. 15 — *Enjoyment — Peaceable — Statutory title how acquired.*

Per *Sadasiva Iyer*, J.—A dominant owner, who has neither been obliged to resort to physical force to exercise his right of easement at any time nor has been prevented by use of force by servient owner from exercising such right at any time within 20 years expiring within two years before suit is enjoying peaceably notwithstanding oral disputes regarding it. Per *Bakewell*, J.—The adverb 'peaceably' indicates the manner in which dominant owner must conduct himself in his use of the servient tenement, *i.e.*, the person claiming a right of easement must not have deprived the servient owner of that right by use of force or secretly. It is unnecessary to go into the questions of lost grant, acquiescence and so on, on the servient owner's part when the question of acquisition of statutory prescriptive right to easement under the Easements Act is considered. A statutory prescriptive title to an easement is impossible to be acquired under S. 15 unless and until the claim thereto has been contested in a regular suit. 10 A. L J. 227; 6 C. 394 (P.C.). Foll. (*Sadasiva Aiyar and Bakewell*, JJ.) MUTHU GOUNDAN *v.* ANANTHA GOUNDAN.
29 M.L.J. 685=18 M.L.T. 476=2 L.W. 1107=31 I.C. 528=(1916) 1 M.W.N. 113.

——S. 15—*Enjoyment—For less than prescriptive period—Interference—Injunction.*

Enjoyment for less than the prescriptive period entitles the persons enjoying, to an injunction against a trespasser. Plffs. had been taking water with the permission of the Govt. to a tank along a channel which mostly ran through Govt. *Poromboke* lands, but had for some years prior to suit not used this channel. On a suit being brought for declaration of their right against the defts. trespassers, *Held*, that the non-user by the plff. did not disentitle them to the relief as the deft. had no right either by grant or by prescription. The plff. were entitled to a decree restraining the defts. from interfering with the plffs. in their enjoyment of the channel and of the water flowing in it. (*Seshagiri Iyer and Napier*, JJ.) ANANDA DESIKACHARIAR *v.* VISWANATHA MUDALI. **30 I.C. 989=16 M.L.T. 515.**

——S. 15—*Enjoyment—'As an easement.'*

The words 'as an easement' do not mean that the enjoyment should be in the assertion of claim of an easement. Illus. (*b*) shows that the words were used in order to show that unity of title or possession makes the possession useless to create a right of easement. Assertion of full ownership which however negatived by the evidence may suffice to establish an easement provided that the user was for the beneficial enjoyment of another land. (*Sundara Iyer and Sadasiva Iyer*, JJ.) KONDA REDDI *v.* RAMASWAMY REDDI. **38 Mad. 1=17 I.C. 112=6 L.W. 564.**

——S. 15—*Enjoyment—Acquiescence—If source of easement.*

Mere acquiescence does not create an easement. Unless the acquiescence amounts to an implied contract granting the easement any omission to object to the enjoyment, will not

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give the dominant owner any right except in case of enjoyment for over the prescriptive period. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) BHAGAVATULA SUBRAMANYA SASTRI v. BHAGAVATULA LAKSHMINARASIMHAM **16 I.C. 893.**

——— **S. 15**—*Enjoyment—Two years before suit—Easement of necessity.*

When two houses originally owned by one and the same person have back yards opening into a lane which separates them, in the absence of evidence as to when the gates were opened the presumption is that they were so opened before severance and that the enjoyment of a right of way for over twenty years peaceably and as of right ending within two years before suit created a prescriptive right. (*Wallis and Munro, JJ.*) CHINNAMMAL *v.* DEVANASAMMAL. **9 M L.T. 274 = 9 I.C. 764 = (1911) 1 M.W.N. 274.**

———**S. 15, Expl. (1)**—*Enjoyment—User of way.*

Where in the absence of a license or agreement the defts. were found to have been using a way over plff 's land openly, peaceably and as of right for over the statutory period, *held*, the defts. had acquired an easement in respect of that right. (*Benson and Krishnaswami Iyer, JJ.*) RANGASWAMI PILLAI *v.* KONDIA PILLAI. **9 I.C. 640 = 9 M.L.T. 350.**

———**S. 15**—*Enjoyment—Grant—Long user—Presumption.*

Continuous and peaceable user of an easement of light and air for more than twenty years may give rise to a presumption that it existed with the consent of the owner of the servient heritage. 6 C. 394, Referred to. (*Hallifax, A.J.C.*) SONBA *v.* DATTATRAYA. **6 N L J. 39 = 1923 Nag. 192.**

———**S. 15**—*Enjoyment—Light and air—"As of right"—Road or path—Open user—Presumption.*

As easement of light and air need not be proved to have been enjoyed as of right, but under S. 15 of the Act, it is enough, if there is enjoyment without interruption for more than 20 years. An open user of a road or path, without interruption, for a long time, not under permission or sufferance, is *prima facie* evidence of enjoyment as of right. (*Macnair, J.C.*) HARI *v.* MAHADEO. **61 I C. 869.**

———**S. 15 (5)**—*Enjoyment.*

Under S. 15 (5) plaintiff has to show a period of 20 years continuing up to some point within two years before the institution of the suit. The fifth paragraph of S. 15 of the Easements Act seems to render it impossible to acquire statutory prescriptive title to an easement, unless and until the claim thereto has been contested in a suit. (*Simpson, A.J.C.*) BASDEO SINGH *v* BHAGWAT PRASAD. **1923 Oudh 29.**

———**S. 15**—*Lateral support—Right to.*

The right to the lateral support to a wall, from a neighbour's land, is acquired only by

EASEMENTS ACT (V of 1882), S. 15—Nature of Obstruction.

prescription. (*Ayling and Coutts-Trotter, JJ.*) *In re* ATHI AIYAR. **68 I.C 831 = 14 L W. 728.**

Mode of Enjoyment.

———**S. 15**—*Mode of enjoyment—Grant—Lost grant—Presumption—Right to fishery.*

No presumption of a lost grant can be made in the case of the right of fishery where the use of the fishery was in harmony with the right of the public to fish by stakes which is acknowledged method of public fishing on the West Coast of India. Possession of the *dar* (space between two fishing stakes) for over sixty years does not perfect into an easement by way of prescriptive right since under the Easements Act claim to the soil under the fishery has to be made for a prescriptive right. (*Marten, J.*) LAKSHMAN *v.* RAMJI. **23 Bom. L.R. 939.**

———**S. 15**—*Mode of enjoyment—Easement right of way—Proof.*

A plff. is entitled to have his right of way declared if he establishes the terminiz to and from which the way runs. And the right would be enjoyed in the way the servient owners point out as the tract. If no tract is pointed out the plff. can enjoy the nearest route. (*Fletcher and Shamsul Huda, JJ.*) LAKHI KANTA *v.* RAJ CHANDRA. **46 I.C 374 = 22 C.W N. 922.**

———**S. 15**—*Mode of enjoyment—User—Legality.*

No use of property which would be legal if due to a proper motive, would become illegal, if prompted by an improper or even a malicious motive. The extent of a right acquired by prescription is measured by the extent of the use and enjoyment thereof during the prescriptive period. (*Mookerjee and Beachcroft, JJ.*) JIBANANDA CHAKRABATI *v.* KALIDAS MALLIK. **42 Cal. 164 = 20 C.L J 97 = 26 I.C. 213 = 18 C.W.N. 1296.**

———**S. 15**—*Mode of enjoyment—Right to use of water—Nature of user.*

It is not necessary to prove annual or continuous user, but only substantial enjoyment whenever the occasion required. The mere fact that the openings made were different in different years does not make the user indefinite when the channels through which the water was taken were the same. The fact that the owner of the subject tenement paid a certain sum for the repair of the embankment for his own benefit does not make the user permissive. (*Caspersz and Chatterjee, JJ.*) GHASI RAM *v.* ASIRBAD. **15 C.W.N. 259 = 9 I C 69 = 13 C.L J. 670.**

Nature of Obstruction.

———**S. 15, Expln. 2**—*Nature of obstruction—Dominant tenement destroyed by fire during the period of acquisition—Re-construction of the house—Effect of.*

The plaintiff built his house in 1897, in one of the walls of which he opened several windows

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while he was enjoying light and air through those windows the house was burnt down by fire in May 1905; but it was re-constructed immediately afterwards. In 1918 the defendants commenced to build, on their own land so as to block up the windows in the plaintiff's house. The plaintiff having sued to restrain defendants from obstructing the light and air through his windows, the defendants contended that the plaintiff had not acquired the easement for the prescriptive period, as there was an interruption in his enjoyment during the time the house was destroyed by fire. *Held*, overruling the contention, that the plaintiff had acquired the right of easement for his windows by prescription. Where the owner of a building, who is in the course of acquiring a right of easement by prescription, has his house burnt down, but begins immediately to re-build his house and places the windows exactly in the same position as the old ones, he can be regarded as enjoying the access and use of light and air continuously, and he will be entitled to protection after twenty years from the first building. If, however, there is any delay in re-building, then that might be evidence of an intention not to resume the user. (*Macleod* C.J. *and Shah*, J.) RATANLAL BHOLARAM *v.* GULAMHUSEN ABDUL ALI. **46 Bom. 448 = 24 Bom. L R. 83 = 1922 Bom. 3.**

———**S. 15**—*Nature of obstruction—Right to light and air—Right of action.*

To constitute an actionable obstruction there must be substantial privation of light enough to render the occupation uncomfortable according to the ordinary notions of mankind. (*White*, C. J. *and Sankaran Nair*, J.) RAMANJULU NAIDU *v.* APPARAJI AMMAL. **(1911) 1 M.W.N. 251 = 9 M L T 383 = 9 I.C. 417 = 21 M L J. 313.**

———**S. 15**—*Nature of obstruction—Right of way—Uninterrupted enjoyment—Onus.*

Knowledge of the fact of enjoyment on the part of servient owner is essential to the acquisition of an easement where the Court is asked to presume a grant. Active obstruction on the part of such owner would negative any such presumption. To negative submission to an interruption the party interrupted need not have brought a suit. The question whether there has been submission to, or acquiescence, in an obstruction, is a question of fact the burden of negativing submission being on the party alleging that he did not submit. (*Drake Brockman*, J.C.) RAMA CHANDRA RAO *v.* VENKAT RAO. **54 I C. 936 = 16 N.L R. 76.**

———**S. 15**—*Nature of obstruction—Actionable obstruction of lights—Nature of.*

It is not enough, for supporting an action for obstruction of light that there has been a diminution of light from what it was before. The decrease in light should constitute a nuisance and make the house uncomfortable according to the ordinary standards of humanity; and in the case of business premises, the

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plff. should be materially hindered from carrying on his business as before. (*Maung Kin*, J.) BALTHAZAR & SONS *v.* M.A. PATAIL. **49 I.C. 488 = 11 Bur. L.T. 109.**

Nature of Right.

———**S. 15**—*Nature of right—Acquisition of easement—Projecting eaves—Extent of the burden.*

All that a deft. whose eaves project over plff's land can acquire after 20 years is an easement imposing the burden on the servient tenement of having that projection over it. Even if he acquired the right to project his roof over the plff.'s land and to discharge rain-water over the plff.'s land, he could not acquire a title to the plaintiff's land. His rights would be in the nature of an easement, which he could only acquire either by grant or by prescription. (*Macleod*, C.J *and Coyajee*, J.) KASHIBHAI KALIDAS *v.* VALLABHAI. **46 Bom 827 = 24 Bom. L.R. 305 = 1922 Bom. 83.**

———**Ss. 15 and 16**—*Nature of right—Easement—Limited prescription.*

A prescriptive right to light and air cannot be acquired as an easement for limited period, *e.g.*, when the servant heritage is in the occupancy of a tenant. (Per *Phillips*, J.) To impose an easement is to create an easement by voluntary act of the owner of a lease or any other person authorised to transfer an interest in the servient heritage. The word does not necessarily mean imposition by some act such as grant, but includes imposition by omission to prevent acquisition by prescription. (*Abdur Rahim and Phillips*, JJ.) VANIYANKANDI *v.* THAYITHOTTATHIL, **42 Mad. 567 = 37 M.L.J. 28 = (1919) M W.N. 305 = 26 M L T. 48 = 50 I.C. 291 = 10 L.W. 87.**

———**S. 15**—*Nature of right—English Prescription Act—Distinction.*

Per *Phillips*, J.—The law relating to the acquisition of rights of easements under the Easements Act appears to be the same as under the English Prescription Act. (*Wallis*, C.J. *and Phillips*, J.) SWAMINATHA MUDALI *v.* VELU MUDALI. **20 M L.T. 544 = (1916) 2 M.W.N. 192 = 35 I C 749 = 4 L.W. 128.**

———**S. 15**—*Nature of right—Possessory right—Easement.*

Easements are not capable in an exact sense of being possessed. The enjoyment which may in time ripen into an easement is not possession and gives no possessory right before the expiry of twenty years. (*Miller and Sadasiva Aiyar*, JJ.) NARASAPPAYYA *v.* GANAPATHY ROW. **29 I.C. 256 = 38 Mad. 280.**

———**Ss. 15 and 18**—*Nature of right—Customary land—Prescriptive rights, difference between.*

A customary right differs from a prescriptive right in the sense that no fixed period for its

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enjoyment is necessary. 20 M. 389 and 9 B, L.R. 454 and 459, Rel. A prescriptive right or easement is a right existing in a particular individual while a customary right belongs to no particular individual but attaches to a locality and is capable of being enjoyed by all, who, for the time being, own land in the locality. 18 M. 320, Rel. (*Kanhaiyalal*, A.J.C.) JAI JAI RAM *v.* SANWAL SINGH.
20 I.C. 467.

Part Acquisition.

———**S. 15**—*Part acquisition—Right of way—Acquisition in part by grant and in part by prescription.*

A right of way over one part may be acquired by grant and over another, by prescription. (*Teunon and Huda*, JJ.) KALACHAND MUKAPADHYA *v.* JOBINDRA NATH CHAKRABATHY.
57 I.C. 862.

Right of Way.

———**S. 15**—*Right of way — Right of passage for sweeper—Acquisition of.*

Where a sweeper uses the lane on the land of another openly and as of right for 20 years, the right of passage has been acquired as an easement. (*Macleod*, C.J. *and Shah*, J.) YOSEF DAVID VARULEKAR *v.* MOSES SOLOMON TALKAR. **24 Bom. L.R. 298=1922 Bom. 79.**

———**S. 15**—*Right of way — Prescription—Proof of claim.*

It is not the law that because there is no regular or defined pathway over the waste land of the defendants which is said to be the servient tenement, no right of easement can be acquired by the dominant owners. If the plaintiffs claiming the right of way by prescription stop the two termini of the pathway their suit ought to fail on the ground that the pathway passed over a piece of waste land in different tracks. 22 C. W. N. 1922, referred to. (*Ghose*, J.) HARIDAS GHOSE MRIDHA *v.* GOURI CHARAN GHOSE. **1924 Cal. 359.**

———**S. 15**—*Right of way—User as of right.*

In deciding whether the user of a right of way is as of right or not, the Court should consider the character of the ground, the space for which the right is claimed, the relations between the parties and the circumstances attending the user. (*Piggott and Rampini*, JJ.) MESER MULLICK *v.* HAJIZUDDI MULLICK.
9 I.C. 965=13 C.L.J. 316.

———**Ss. 15 and 26**—*Right of way for scavengers through dwelling house — Mode of acquisition.*

S. 15 of the Easements Act does not exclude or interfere with other titles and modes of acquiring easements. In the case of long enjoyment of a right claimed, a legal origin should be presumed when there has been a long continued assertion of such a right if such a legal origin were possible. Where user is proved

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the presumption is that it is of right till the contrary is proved. There is no presumption of a license. Where for a period of over 30 years the plaintiff's privy had been cleaned by scavengers passing through the defendant's house. *Held*, the user must be presumed to have been as of right and that the plff. had acquired a right of way through the deft's house for the scavengers to pass into the plaintiff's privy. 6 C. 394; 4 L.W. 128, foll.; 8 C.W.N. 359, dist.; (1891) A.C. 228; 7 A.C. 633, Ref. (*Kumaraswami Sastri and Devadoss*, JJ.) KUNJAMMAL *v.* RATHNAM PILLAI.
45 Mad. 633=42 M.L.J. 417=(1922) M.W.N. 143=31 M.L.T. 180 (H.C.)=15 L.W. 266=1922 Mad. 5.

———**S. 15**—*Right of way—Interruption to right of way—Limitation.*

A suit to establish a right of way must be brought within two years of the interruption, otherwise his enjoyment for 20 years will be of no avail. (*Abdu Rahim and Olafield*, JJ.) NACHIPARAYAN *v.* NARAYANA GOUNDAN.
39 M.L.J. 574=60 I.C. 171=12 L.W. 713.

What rights can be acquired.

———**S. 15**—*What rights can be acquired—Grazing right through the jungle of another village.*

The right to drive cattle to the grazing ground through the jungle of another village is not a right which can be acquired as an easement though enjoyed for any amount of time. (*Rafique and Piggott*, JJ.) LAL BAHADUR *v.* RAMESHVAR DAYAL.
43 All. 345=60 I.C. 990=19 A.L.J. 126.

———**Ss. 15 and 17 (c)**—*What right can be acquired—Agricultural lands—Right to receive rain water through higher lands.*

Considering the position of the lands and the conditions of agriculture in that part of the country it must be held that where the plaintiff had been enjoying the water by means of channels through which water passed to a tank, for a certain number of years no prescriptive right was acquired to receive the water through the channels unobstructed so as to entitle the plaintiff to seek the removal of these obstructions caused by the defendants. Per *Macleod*, C.J.—Although it is quite possible that the owner of one piece of land might acquire the right to drain his water on to the land of another, it would be more natural in hilly districts, such as the one in which the suit lands are situate, for the owner of the lower land to acquire a right to receive water which either falls on or flows into the higher land. It is only in such a way that cultivation in such districts can proceed and the owner of the land in the lower level can acquire such a right against the owner of the land on higher level. (*Macleod*, C.J. *and Shah*, J.) BASWANTAPPA *v.* BHIMAPPA.
23 Bom. L.R. 1004=46 Bom. 116=1922 Bom. 378.

EASEMENTS ACT (V of 1882), S. 15—What rights can be acquired.

———S 15—*What rights can be acquired —Latrines—Scavenging—Right to access.*

A prescriptive right is acquired, if plff.'s privies are cleaned by *mehtars* passing over the land of the deft. for twenty years and to the knowledge of and without obstruction by deft. (*Chatterjee*, J.) DAKSHINA RANJAN DUTT *v.* FAKIR CHANDRA SEN. **30 I.C. 34.**

———S. 15—*What right can be acquired—Right to discharge water on land of defendant through channel across public road—Prescriptive easement.*

A prescriptive right of easement to discharge surplus water on the deft.'s land through a channel across the public road cannot be acquired. (*Mookerjee and Beachcroft*, JJ.) KHULDI RAM NANDI *v.* SURENDRA NATH SAMANTA. **19 C L.J. 42=21 I C. 887= 18 C W.N. 378.**

———S 15—*What rights can be acquired—Fishery— Private rights— How acquired—Prescription.*

Private rights of fishing in public waters may be acquired either by a grant from the crown or by the prescription from which a grant may be presumed. *Quære.*—Whether exclusive rights can be acquired in a tidal or navigable river by proof of mere enjoyment in the manner provided by S. 2 of the Lim. Act. A person to acquire the right of fishery, by prescription must show that he had an uninterrupted enjoyment of it openly, publicly and peacefully for over the statutory period; but where such an enjoyment was in exercise of a common right which he shared with others, he should show that his user was in assertion of a higher right than the general right, in himself and for his exclusive benefit. (*Coxe and Teunon*, JJ.) ABHOY CHARAN *v.* DWARKA NATH MALO. **39 Cal 53= 11 I.C. 180=16 C.W.N. 972.**

———S. 15—*What rights can be acquired—Right to ferry.*

Right to ferry though not an easement is in the nature of an easement and may be acquired by user. 16 C. 608, Foll. (*Coxe*, J.) ABDUL KOYRAT *v.* HEM CHANDRA ROY. **9 I.C. 896.**

———Ss. 13 and 12—*What rights can be acquired—Water of Govt. channel—Ryotwari proprietor — Possessory right — Incorporeal rights.*

No easement or presumptive right can be acquired by a ryotwari landholder in water in a Govt. channel irrigating the lands. No person can claim possessory rights in a channel and ask for injunction against a threatened interference with such rights. There can be no possessory rights in connection with incorporeal rights. In a suit for declaration of the plff's. rights to irrigate his lands with the water of a Govt. channel as against a rival

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proprietor, the Govt. is a necessary party. (*Abdur Rahim and Napier*, JJ.) MAHAN-KALI LAKSHMAN *v.* KARNAM NARAYANAPPA. **(1918) M.W.N 276=23 M.L.T 337= 43 I.C. 80=34 M.L.J. 425.**

———S. 15—*What rights can be acquired—Right to dam up a stream—Acquisition of.*

A prescriptive right to dam up a stream is acquired by the continued exercise of the right for twenty-five or thirty years. (*Sankaran Nair and Sadasiva Aiyar*, JJ.) MUKKASA NAIR VEETIL *v.* SECY. OF STATE **15 M L.T. 247=1 L.W. 307= 26 M.L J. 385=24 I C. 517= (1914) M.W.N. 521.**

———S. 15—*What rights can be acquired —Minerals—Grant—Right to minerals.*

Per *Spencer*, J.—In the case of *shrotriem* grant the right of Govt. over the minerals is not lost by limitation. (*Sadasiva Aiyar and Spencer*, JJ.) SECY. OF STATE FOR INDIA *v.* SRINIVAS CHARIAR. **23 I C. 144= 15 M L.T. 277.**

———S. 15—*What rights can be acquired —Fishing—Prescription—Implied grant.*

Under S. 15 of the Easements Act, a right of fishing cannot be acquired by prescription but from uninterrupted user such a grant may be presumed. The Easements Act does not exclude or interfere with the other titles or modes of acquiring easements. (*Mitta*, A.J. C.) SITARAM *v.* PETIA. **43 I.C. 962= 14 N.L.R. 35.**

———S. 15—*What rights can be acquired—Easement—Right to a ferry.*

The right to establish and maintain a ferry over the property of another is a right of easement for which twenty years' use is necessary under S 28 of the Lim. Act. (*Das and Adami*, JJ.) PARDIP SINGH *v.* SECY. OF STATE. **5 P.L J. 600=1 P L T. 395= 1920 Pat. 297=57 I.C. 516= 2 U.P.L.R. (P.) 181.**

Who can acquire.

———S. 15—*Who can acquire—Right how extinguished.*

A claim of higher right of ownership does not prevent another person from acquiring a right of easement, if he can show that he converts certain rights of enjoyment over the land in question for the benefit of another land of his own. A right once established by immemorial user, is not extinguished by non-user or interruption for more than two years. (*Mookerjee*, A.C J. *and Fletcher*, J.) SURENDRA NATH *v.* GIRDHARI SINGH. **62 I.C. 633.**

———S. 15—*Who can acquire—Landlord and tenant.*

A right of way cannot be acquired by a tenant over the lands of the landlord within his tenancy except by grant under S. 26 of the

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Easements Act. 31 I.C. 549, Ref. to. The mere grant of leave and license of a right of way by the landlord to his tenant, will not invest the latter with a right of way enforceable in suit. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA CHAUDHURY *v.* ALLEN, J. DELANNEY. **34 I.C. 450=20 C.W.N. 1158.**

———**S. 15**—*Who can acquire—Whether joint tenants can acquire easements by prescription against each other.*

A prescriptive right cannot be acquired by one tenant against another tenant of the same landlord *Quære*:—Whether one permanent tenure holder can acquire an easement against another permanent tenure holder under the same landlord.? (*Chatterjee*, J.) MADAN MOHAN *v.* SASHI BHUSHAN. **31 I.C. 549= 19 C.W.N. 1211.**

———**S. 15**—*Who can acquire—Landlord and tenant—Easement by prescription.*

A tenant in a zamindari cannot acquire the right to irrigate his land *held* by him as a tenant, with water from the tank belonging to the Zamindar. (*Sadasiva Iyer and Spencer*, JJ.) BAYYA SAHU *v.* KRISHNA CHANDRA GAJAPATHI. **36 I.C 598=11 L.W. 600.**

———**S. 15**—*Who can acquire—Joint user.*

The joint user of the water from a tank for the joint cultivation of a plot does not affect the nature of the right of easement which is a right over the servient heritage acquired by virtue of the joint ownership of the plot. The right prescribed for, is not a right to irrigate jointly but a right as part owners of a dominant heritage. 8 C.W N. 359, Dist. (*Wallis*, C J. *and Phillips*, J.) SWAMINATHA MUDALI *v.* VELU MUDALI. **20 M.L.T. 544=(1916) 2 M W N 192= 38 I.C. 749=4 L.W. 128.**

———**S. 15**—*Who can acquire—Successive holders—Prescription—Acquisition on right.*

The essential requisite of prescription is that it should be acquired against specific individuals: prescription against one person cannot be tacked to that acquired against others, 24 M. 219, Dist. 10 I.C. 110; 14 A. 156; 23 A. 448, Foll. Where there are successive *stanom* holders, each is independent of the other and they do not claim through each other and a suit by a particular claimant for possession of the *stanom* is not barred by limitation if brought within the limitation period the period being reckoned from the date on which his rights arose. (*Ayling and Seshagiri Aiyar*, JJ.) PATINKAR KUKU *v.* RAMAN VARMA. **24 I C. 519= 28 M L J. 669.**

———**S. 15**—*Who can acquire—Caste—If can acquire right of way.*

A caste is a corporation with civil rights and can acquire by user, title to a right of way, even if the user be only of a few members of the caste provided it is exercised on behalf of and for the caste. (*Sankaran Nair and Ayling*, JJ.) SUPPEN ACHARY *v.* VANNIA KONAR. **24 I.C. 467=2 M.L J. 110.**

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———**S. 16**—*Acquisition of easement--Proof.*

The mere finding that a *parnala* is old is not sufficient to prove that an easement has been established with respect thereto. (*Wilberforce*, J.) AHMED BAKSH *v.* MUSSAMMAT PALI. **66 I.C. 922=8 Lah. L.J. 58.**

———**S. 17**—*Surplus water—Defined channel—Acquisition—Grant—Presumption—English and Indian Law.*

A person acquires a right of easement of water of artificial channels or derived from artificial tank or pools. 7 M. 530, Foll. The water of a tank fed by rain water as well as surface water from neighbouring lands flowed in a defined channel from the deft.'s land through the land of the plff. who was not the owner of the tank. The deft. had been using and enjoying the said water for a sufficient length of time and as a matter of right. *Held*, that he must be deemed to have acquired a right of easement with respect to the same, notwithstanding the fact that the water was what might be called surplus water. In the circumstance of the case, a grant of the said right might be presumed. (*Abdur Rahim and Bakewell*, JJ.) BODDULURU NAGAYYA *v.* BACHU CHENCHU RAMAYYA. **33 M.L.J. 674=44. I C. 625= (1917) M.W.N. 863.**

———**Ss 17 (c) and 15**—*Right to receive rain water through higher lands.*

Considering the position of the lands and the conditions of agriculture in that part of the country it must be held that where the plaintiff had been enjoying the water by means of channels through which water passed to a tank, for a certain number of years no prescriptive right was acquired to receive the water through the channels unobstructed so as to entitle the plaintiff to seek the removal of these obstructions caused by the defendants. Per *Macleod*, C. J.—Although it is quite possible that the owner of one piece of land might acquire the right to drain his water on to the land of another, it would be more natural in hilly districts, such as the one in which the suit lands are situate, for the owner of the lower land to acquire a right to receive water which either falls on or flows into the higher land, it is only in such a way that cultivation in such districts can proceed and the owner of the land in the lower level can acquire such a right against the owner of the land on a higher level. (*Macleod*, C. J. *and Shah*, J.) BASWANTAPPA *v.* BHIMAPPA. **23 Bom L R. 1004=46 Bom. 118= 1922 Bom. 378.**

———**S. 17 (c)**—*Right to take water through another's land.*

The right to take water from a river running through an undefined channel over the neighbouring lands is not one coming under S. 17 (*c*) of the Act, but is a right which though perhaps could not be acquired by prescription as an easement, could be inferred from long user. A

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presumption of lost grant can be made if the usage is long and uninterrupted if it could form the subject of grant. (*Beaman and Marten*, JJ.) JANARDAN GANKESH KHADILKAR *v.* RAVJI BHIKAJI KONDKAR. **42 Bom 288 = 45 I.C. 448 = 20 Bom. L.R. 398.**

——— **S. 17 (c)**—*Right to water flowing in undefin d channels—Prescription.*

A right to the use of water flowing in undefined channels cannot be acquired by prescription. (*Martineau*, J.) NAGINA SINGH *v.* MALHI. **64 I.C. 153 = 3 Lah. L J. 555.**

——— **S. 18**—*Customary easement—Right of way—Zemindars have no right to close.*

A customary easement is not limited to easements of a kind which could not be recognised at all apart from official customs. Any kind of easement recoginsed by the custom of a province will fall within the term. Thus the Zemindars in U. P. cannot arbitrarily close a right of way used by occupancy tenants for more than 30 years. (*Daniels*, J.) KARAN SINGH *v.* DAL CHAND. **1924 All. 169.**

———**S. 18**—*Right of burial—Customary right—In the nature of an easement.*

A customary right of burial can exist, apart from provisions of Indian Easements Act; hence where it is found that a certain family used a grave as a burial ground customarily it was held not an easement but a customary right in the nature of an easement. 23 B. 666; 17 A. 87, Foll. (*Piggott*, J.) MATHURA PRASAD *v.* KARIM BAKSH. **31 I C. 805 = 13 A.L J. 1094.**

——— **S. 18**—*Privacy—Intervention of a space*—Purdah.

If a right of privacy is established, the intervention of a space between two houses cannot affect the right of privacy. If in fact that right has been invaded by the new constructions complained, the injured party has a good cause of action to maintain the suit. 6 Bom. H.C R. 143, Appr. The *Purdah* system is generally observed by both Hindus and Mahomedans in the United Provinces except by the lowest classes. (*Rafique*, J.) JAMIL-UD-DIN *v.* ABDUL MAJEED. **28 I.C. 674 = 13 A.L.J. 361.**

——— **S. 18**—*Right to cut sugar-cane and boil justice.*

The right to cut sugarcane, to extract, boil and concentrate the juice on a piece of land in the *abadi* is in the nature of a customary easement referred to in S. 18 and can be acquired by a tenant against the landlord. (*Sunder Lal* J.) RAJAB ALI *v.* RAJJOO KHAN. **26 I.C. 122 = 12 A.L.J. 963.**

——— **S 18**—*Right of privacy—Houses standing on opposite sides of lane.*

Whether the houses in question are on the same side of a street or on the opposite side, a right of privacy exists and this right needs more protection when the person who invades it, is opposite to the person whose right of

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privacy is invaded and there is invasion of the right of privacy if a person constructs a room in the upper storey of his house overlooking another person's house. (*Knox*, J.) ENAYAT HUSSAIN *v.* BILKIS FATMA. **24 I C. 683.**

——— **S. 18**—*Right to prayers — Mahomedan Law.*

By custom, a Mahomedan cannot acquire any right to say prayers on the land of another, except with the other's permission, express or implied. (*Karamat Hussain*, J.) NIADAR *v.* TIKA. **9 I.C. 45.**

——— **S. 18**—*Privacy—Custom in Gujarat, invasion of.*

In the province of Gujarat there is a customary usage which makes an invasion of the privacy an actionable wrong, and a man may not open new doors or windows in his house or make any new apertures or enlarge old ones in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation. (*Macleod*, C. J. *and Heaton*, J.) MANEKLAL MOTILAL *v.* MOGANLAL NAROTAMDAS. **55 I C. 949 = 22 Bom. L. R. 226.**

——— **S. 18**—*Customary easement — Overhanging trees.*

A custom to allow the neighbour's trees to overhang one's house and premises, is neither definite nor reasonable. Whether the right to retain trees overhanging another's land is customary easement. (*Shaw and Kemp*, JJ.) JOSHI *v.* OKA. **43 Bom. 164 = 47 I C 629 = 20 Bom. L.R. 826.**

——— **S. 18**—*Customary right — Right of way—Local custom—Prescription—Lost grant.*

A customary right is not an easement in the legal sense of that term. Customary rights have their origin in grant or prescription, but it is not necessary that in every case there should be evidence from which a lost grant may be presumed. Nor is it necessary that the custom should be traced back for the whole time necessary to make it immemorial. (*Richardson and Suhrawardy*, JJ.) ALI MAHOMED *v.* SHEIKH KATU. **36 C.L J. 280 = 1923 Cal. 200.**

——— **Ss. 18, 18**—*Right by custom—Right by prescription—Distinction between.*

What may suffice to establish a customary easement may be wholly insufficient to establish an easement by prescription and *vice versa*. The two rights are different although the result may be the same. Consequently where a claim of easement is based on a prescriptive title it is not open to the appellate Court to treat the case as one based on custom. (*Broadway and Abdul Qadir*, JJ.) SITARAM *v.* GHANNO. **1924 Lah. 275.**

——— **S. 18**—*Privacy—Custom—Injunction.*

A plff. is entitled to an injunction restraining the deft. his neighbour from opening such windows and ventilators as would infringe the

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plff.'s right of privacy which he is entitled to by custom (*Scott-Smith*, J.) LAJJA RAM *v.* FAQIRA. **74 P.L.R. 1916=29 I.C. 164=251 P.W.R. 1915.**

——S. 18—*Customary right and easement—Distinction between.*

Per *Odgers*, J.—The distinction between a customary right and customary easement is seen in 20 Mad. 389. No fixed period is laid down by law as necessary to establish the former. (*Ayling and Odgers*, JJ.) TALUK BOARD, DINDIGUL *v.* VENKATRAMA AIYAR. **46 Mad. 866=45 M.L.J. 333=18 L.W. 366=33 M.L.T. (H.C.) 40=1924 Mad. 197.**

——S. 18—*Water—Right to — Obstruct and direct channel—Extent of.*

A person who is entitled to put up a dam of turf and loose stones, is not necessarily entitled to substitute a tighter and stronger dam. The question in each case is the exact nature of the right which is shown by the evidence to have been acquired. (*Benson and Sundara Aiyar*, JJ.) BHAKTAVATSALA AMMAL *v.* SECRETARY OF STATE FOR INDIA. **9 I.C. 686=9 M.L.T. 378.**

——S. 18—*Grazing right.*

A right to graze cattle in a jungle area of the village can be the subject of a customary right. 31 C. 503 (P.C.), Ref. (*Kanhaiya Lal*, A.J.C.) JAI JAI RAM *v.* SANWAL SINGH. **20 I.C. 467.**

——S. 18—*Privacy—Extent of the right.*

A plff. cannot ask the deft. to close his windows on the ground of the invasion of his right of privacy when it is proved that the said windows do not look out upon the plff.'s house but upon certain plots of land acquired by him less than twenty years. (*Piggott*, J.C.) MUHAMMAD SHABBIR *v.* MUHAMMAD JAWAD. **15 I.C. 270.**

——S. 18—*Customary easement—Power to take earth for repairs of house.*

A custom by which earth is taken from a piece of waste land to repair houses in a village after inundations is not unreasonable. On the contrary, it seems to be an eminently reasonable custom that the people of the village should take earth from a ditch which serves no other purpose, in order to repair their houses. It was not shown that it was destructive of the subject-matter. (*Ross*, J.) BABU BIKOO MAHTON *v.* NARAYAN SAHU. **1924 P. 303.**

——S. 18—*Custom of privacy—Larkhana-city—Sind.*

Held on the evidence that there was a custom of privacy with respect to the roofs of houses in the city of Larkhana in Sindh. (*Fawcett*, J.C. *and Kemp*, A.J.C.) SHAH MAHOMED *v.* RAMJAN. **66 I.C. 333.**

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——S. 19—*Garden—Right of management and ownership reserved — Succession —How regulated.*

A garden, over which an easement to enjoy it as a park, is created in favour of a community but the ownership and management of which is reserved to the owner descends in succession in the ordinary way, subject to the charge upon it. (*Kincaid and Raymond*, A.J.Cs.) LAKHAMBAI *v.* DEVIBAI. **59 I.C. 673=14 S.L.R. 132.**

——Ss. 22 and 23—*Easement for a particular purpose—Conversion.*

Easement confined to a particular purpose ought not to be extended to any other. A backdoor of a house which was occasionally used by the sweepers or the ladies of the house cannot be converted into a main entrance to be used by males. (*Rafique*, J.) JAMNA PERSHAD *v.* GOPINATH. **19 I.C. 984.**

——S. 22—*Right of way—Deviation from, not permissible except with consent of dominant owner.*

The general rule is that a right of way once defined cannot be altered and the dominant owner is entitled to exert his strict rights unless he can be induced to consent to a deviation. S. 22 of the Easements Act does not deal with the question whether the servient owner, when once the right of way has been defined, can substitute a new way and recourse must therefore be had to the common law. (*Macleod*, C.J. *and Coyajee*, J.) DHUNDIRAJ BALAKRISHNA PHALNIKAR *v.* RAMCHANDAR GANGADHAR KALE. **24 Bom. L.R. 437=1922 Bom. 407.**

——S. 22—*Right of way—Exercise of right.*

The owner of a private right of way is entitled to enter the way at one and the same place only, and not at any other. (*Mookerjee and Beachcroft*, JJ.) JIBANANDA CHAKRABARTI *v.* KALIDAS MULLIK. **42 Cal 164=20 C.L.J. 97=26 I.C. 213=18 C.W.N. 1296.**

——S. 22—*Extension of easement right—If allowed.*

Under S. 22 of the Easements Act the dominant owner must exercise his right in the mode which is least onerous to the servient tenement and cannot impose any additional burden on it. Where the easement right is only to use a roof as an open space, the holder cannot build over that portion. (*Abdul Qadir*, J.) HANS RAJ *v* MALAWA MAL. **1924 Lah. 387.**

——S. 23—*Tiled roof — Pukka roof—Additional burden.*

Deft. who had a right to discharge water from his thatched roof to the plff's. roof pulled down his house and built a three storied house with spouts, to discharge water on the plff.'s land. *Held*, that the burden on the plff.'s land was increased within the section. (*Tudball*, J.) DAMODAR DAS *v.* TILAK CHAND **30 I.C. 941=13 A.L.J. 791.**

EASEMENTS ACT (V of 1882), S. 23.

———S. 23—*Blocking of water channel—Power of Court to make new outlet.*

Where the deft. locked a water channel of the plff. by building a wall, the Court directed the opening of another channel through the deft.'s land without demolishing the wall. (*Banerji, J.*) BISHUNATH SHUKUL *v.* GANESH DATT. **29 I.C. 1002=13 A.L.J. 637.**

———S. 23 — *Easement — Alteration — Increase of burden.*

No man can impose a new or increased restriction or burden on his neighbour by his own act and for this reason an owner of an easement cannot, by altering his dominant tenement, increase his right. The extension of the projection of a cornice beyond its original breadth and the consequent increase in the flow of rain water on the land of the servient owner are both an addition to the burden of the servient owner. (*Mookerjee, C.J. and Fletcher, J.*) SURESH CHANDRA BISWAS *v* JOGENDRA NATH SEN. **24 C.W.N. 896=53 I.C. 851= 32 C.L.J. 27.**

———S. 23—*Reconstruction of house—* Roshandans—*Blocking of.*

Re-construction of a house by the dominant owner involving a change in the situation of the *roshandans* does not mean a fresh easement requiring a fresh period of twenty years for its acquisition. Hence the dominant owner is entitled to a mandatory injunction for demolishing the wall constructed by the servient owner so as not to obstruct the *roshandans*. 26 B. 374, Dist. (*Chevis, J.*) DHARAM DAS *v.* PIYARE LAL **45 I.C. 985=98 P.W.R. 1918.**

———S. 23—*Easement — Extension of— Increase of flood through drain.*

A person is not entitled to enlarge his right of easement by increasing the volume of water flowing through a drain through which he was entitled to discharge only the rain water and the ordinary waste water. (*Le Rossignol, J.*) RURA *v.* GAUDA RAM. **102 P.L.R. 1917= 42 I.C. 284=88 P.W.R. 1917.**

———S. 23— *Right of way — Occasional deviations—Restricted right.*

Where the plff.'s right of way is proved over a defined track, occasional deviation therefrom does not affect his right. The prohibition of the user of the track, during a particular season does not negative the claim of a general right of way, but is presumptive proof of a restricted right. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) ETHAMUKKALA KONDA REDDY *v.* SUBBA RAO. **18 I.C. 85.**

———S. 23—*Easement—Alteration of mode of enjoyment—Rain water—Right to discharge.*

The owner of the dominant tenement may raise the height of the eaves so long as he does not know an increased burden of the servient tenement, but the projection of the new roof should not exceed that of the old though at an increased height. If the dominant owner exceeds the right, injunction and not damages is the proper remedy. (*Fawcett, A.J.C.*) AYOOB ISMAIL *v.* NARBEAHMAD SULEMAN. **28 I.C. 169.**

EASEMENTS ACT (V of 1882), S. 24.

———S. 24—*Dominant owner—Right to do acts to secure enjoyment.*

By the Civil Law the owner of a dominant tenement has a right to do whatever is requisite to secure to himself the fullest enjoyment of his servitude, so long as he does not impose any additional burden upon his servient heritage. (*Knox, J.*) LALA BALBIR SINGH *v.* AMAR SINGH. **39 I.C. 890 (2).**

———S. 24—*Accessory right—Right to discharge rain water.*

The accessory rights mentioned in S. 24 of the Act are not intended to deprive the servient owner of his rights of property unless such a result is absolutely essential. Where a plff. having a right to discharge rain water from eaves on defts'. land sued for an injunction restraining him from making any use of his land which would prevent plff. from going upon it for all purposes of repairing the wall of his house supporting the eaves, etc. *Held*, that the plff. could well repair the wall and the eaves from the inside and could not be granted an injunction. (*Beaman and Heaton, JJ.*) HIMAT LAL MAGANLAL SHAH *v.* BHIKABAI AMRITLAL SHAH. **42 Bom. 529=48 I.C. 422= 20 Bom. L.R. 403.**

———S. 24—*Rights of dominant and liabilities of servient owner.*

The dominant owner has a right to do everything requisite to secure to himself the fullest advantage of his servitude but thereby he should not impose any additional burden on the servient tenement. (*Broadway, J.*) NAGHIA *v.* EDHAM. **39 I.C. 592=18 P.W.R. 1917.**

———S. 24 — *Adjoining house-owners— Right to go to neighbour's land to repair wall —Eaves.*

Where the repair of the wall is reasonably necessary for its enjoyment, the right to go to the neighbour's side of the premises to repair the wall is a necessary easement. The right does not allow going over the deft.'s roof. A person can also enter his neighbour's house or land to protect his eaves which project over the neighbour's house. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) BHAGAVATULA SUBRAMANYA SASTRI *v.* BHAGAVATULA LAKSHMINARASIMHAM. **16 I.C. 893.**

———S. 24, Illus. (d)—*Easement—Public way—Dedication.*

Public rights of way are not easement but arise from a dedication to the public evidenced by a deed or implied from custom and user. There can be no right of easement in favour of an indeterminate body of persons. Where the owner of lands renders a way impassable, persons having a right to use the way may

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deviate from it and pass over adjoining land of the owner provided the deviation is reasonable. (*Batten*, A.J.C.) LAXMAN *v.* TUKIA.
44 I.C. 868 = 14 N.L R. 78.

———S. 27—*Under-ground water-flowing in defined channel—Interference with—Injunction.*

Where water flowing underground in a defined subterranean channel which forms the source of supply for the plaintiff's springs, is abstracted by the defendants by cutting off a channel on their own land very near the springs. *Held*, that the plaintiff having acquired a right of easement to the supply of water through the subterranean channel, could restrain by injunction any attempt to divert the under-ground channel or diminish his water supply. (*Pratt and Fawcett*, JJ.) BABAJI RAMLING *v.* APPA VITHAVJI.
25 Bom. L R. 789 = 47 B. 809 = 1923 Bom. 305.

———S. 28—*Right of way for carts does not include right of way for sweepers—Intention of parties.*

A right of way of one kind, *e g.*, for persons, cattle and carts, etc., does not include a right of way of another kind, *e.g.*, for sweepers removing nightsoil, in the absence of evidence as to the probable intention of parties, and the purpose for which the right was imposed or acquired. (*Macleod*, C J. *and Heaton*, J.) CHINTAMANI HARGOVAN *v.* RATANJI BHIMBHAI.
59 I C. 426 = 22 Bom. L.R. 1131.

———S. 28—*Larger right includes smaller right.*

Where an easement is claimed over another's property the servient tenement should not be saddled with a heavier burden than what the plaintiff has succeeded in proving. But when a particular mode of user is not heavier than the mode of user proved, the plaintiff may be allowed to use it in that particular way, *e.g.*, the user of a way for horses may include the right to lead smaller animals as well but not larger animals or loads. The user of a path for the passage of men, carts and palanquins, may also entitle the dominant owner to take cattle, processions and corpses along the path as the latter user does not add to the burden on the servient tenement. (*Suhrawardy and Cuming*, JJ.) RAM KUMAR MAZUMDAR *v.* MOHIN CHANDRA DUTTA. **65 I.C. 579.**

———S. 28—*Pasturage right—Extent.*

If the grazing area is larger than that required by the persons, a proprietor may use the excess for his own purposes. The persons having grazing rights cannot prevent him from developing any excess area and using it to its best purposes. 31 C. 503 P.C.; 86 P.R. 1911, Ref. (*Wilberforce*, J.) KARTAR SINGH *v.* RALLA.
67 I.C. 306 = 2 Lah. L.J. 44.

EASEMENTS ACT (V of 1882), S. 30.

———S. 28—*Exclusive fishery rights, if includes occupancy right.*

Exclusive fishery rights do not give occupancy right but lease of a holding, part of which is underwater, will give to acquisition of occupancy right in the whole. (*Mullick and Ross*, JJ.) MESSRS. HENRY HILL & CO *v.* SHEORAJ RAI.
3 P.L.T. 53 = 1922 P. 9.

———S. 28 (b)—45° *rule—Light—Extent of.*

As regard an easement of light, there is no rule defining the measure of the dominant owner's right or requiring an angle of 45° through which the rays of the sun are to be received. To sustain an action, there must be a substantial privation of light enough to render the occupation of the house uncomfortable according to ordinary notions. (*Walsh*, J.) MT. CHANDAN KUNWAR *v.* NARAIN.
1923 All 542.

———S. 28 (c)—*Easement of light—Actionable interference—Nuisance.*

The owner or occupier of a dominant tenement in respect of which an easement of light has been acquired by prescription is entitled, not to the full amount of light enjoyed during the prescriptive period, but only to so much of it as will suffice for the ordinary purpose of habitancy or business according to the ordinary notions of mankind. There is no infringement of the right unless the obstruction amounts to a nuisance. *Jolly v. Kene*, (1907) A.C. 1, has established that the law as formulated by *Lord Davey* in *Colls v. Home and Colonial Stores* is the law meant to be laid down by that decision. (*Lord Moulton.*) PETER CHARLES EARNEST PAUL *v* WILLIAM ROBINSON. **42 Cal. 46 = 18 C.W.N. 933 = 27 M.L J. 117 = 1 L.W. 861 = 16 M L T 204 = (1914) M.W.N. 631 = 12 A.L J 1166 = 24 I C. 300 = 16 Bom. L R. 803 = 20 C.L.J. 353 = 41 I.A. 180 (P.C.).**

———Ss. 29, 43—*Dominant owner cannot increase burden.*

The height of the roof in the dominant tenement which had an easement of letting down rain water on another's roof, was raised from 7 feet to 21 feet and instead of allowing the dripping of water along the eaves, it was poured down through pipes, *held*, that burden on the servient tenement is increased thereby and therefore the easement is extinguished. (*Adami*, J.) KESHARISAHAY SINGH *v* NIT NARAYAN SINGH. **58 I.C. 967.**

———S. 30—*Partition—Right of way.*

If two houses were common and a certain right of way belonged to the parties, the passage being common then, under the Easements Act, it must be presumed, in the absence of any express agreement between the parties, that at partition, the passage was received for common enjoyment. (*Chandavarkar and Batchelor*, JJ.) NATHUBAI *v.* BAI HANS GAVRI. **36 Bom. 379 = 15 I.C 818 = 14 Bom. L.R 418.**

EASEMENTS ACT (V of 1882), S. 30.

——— S. 30—*Division of dominant heritage —Right to easements become annexed to each share.*

When a dominant heritage is divided between two or more persons the easement becomes annexed to each of the shares, provided that such annexation is consistent with the terms of the instrument under which the division was made. (*Phillips and Devadoss*, JJ.) HOTA VEERABHADRAYYA *v.* VENKATAKRISHNA RAO. (1923) M.W.N. 454= 18 L.W. 404=1923 Mad. 674.

———S. 30—*Right of way—Conveyance of parcels by same grantor.*

Where the same grantor conveys in the course of one transaction portions of his property, to several grantees, each grantee is presumed in law to take his portion subject to such rights as a right of way as are created in favour of the other grantees. "Appurtenances" when used in a conveyance include a right of way. (*White*, C.J. *and Tyabji*, J.) PENUKONDA VENKIAH *v.* SANKA KRISHNA MOORTHY. 38 Mad. 141=(1913) M.W.N. 317= 13 M.L.T. 313=19 I.C. 80=24 M.L.J. 552.

———S. 33—*Diversion of water.*

Where the plff. has a right to pass his rain and sewage water across the deft.'s land to the public drain, the diversion of the old route taken by the water in former days and passing it by another route does not constitute an obstruction to the exercise of plff.'s right. (*Tudball*, J.) LAKSHMI NARAIN *v.* RAM SARUP. 30 I.C. 508=31 A.L.J. 821.

———Ss. 33 and 35—*Disturbance of easement—Remedy— Damages — Interference by law.*

Where an easement has been disturbed, plff. is entitled to an injunction rather than damages. He is not entitled to an injunction except in such cases where he would be entitled to recover damages under Chapter IX of the Act. S. 33 allows compensation to be recovered provided that the disturbance has actually caused a substantial damage to the plff. as explained in that section. *De minimus Non-Curat lex.*—The law does not concern itself with a disturbance which is trivial or immaterial. Where the plff. comes into Court at once, when the disturbance is threatened and the deft. completes his structures pending the suit, he does so at his own peril. (*Tudball and Rafique*, JJ.) GAJADHAR *v.* KISHORI LAL. 28 I.C. 962=13 A.L.J. 385.

———S. 33—*Suit for compensation—Parties.*

It cannot be disputed that, as a general rule where a person claims a right of easement on a servient tenement all the owners of the servient tenement ought to be made parties, as any decree in the absence of a necessary party declaring a right of easement would be infructuous. But there are cases which may well be taken as exception to the general rule, such as where any of the co-sharers took no part in obstructing the plaintiff's right. (*Ghose*, J.) AMRITANATH BISWAS *v.* JOGENDRA CHANDRA BHATTACHARJEE. 1924 Cal. 369.

EASEMENTS ACT (V of 1882), S. 35.

———S. 33—*Light and air—Obstruction—Test of interference.*

The test of interference of the right to light and air is whether the obstruction amounts to a nuisance. (*Chatterjee and Teunon*, JJ.) BANAMALI RAOJ *v.* MUKUND LAL GHOSE. 23 I.C. 959.

———S 33—*Actionable wrong—Obstruction by servient owner—No remedy against—If no obstruction to the original quantity of light.*

There is no actionable wrong unless there is a material interference with the physical comfort of the plff. or other substantial damage. 33 M. 327 and *Coll's case* (1904) A.C. 179, Foll. If, in spite of an obstruction being created by the servient owner, the same quantity of light still penetrates the ancient windows of a dominant owner the latter has no remedy in equity. (*Pratt*, J.C. *and Crouch*, A.J.C.) PREMJI LADHA *v.* VISRAM ANNUL. 33 I.C. 615=9 S.L.R. 101.

———S. 35—*Light — Infringement — What amounts to—Nuisance.*

The owner of dominant tenement is entitled to so much light through his ancient windows as is required for ordinary purposes of inhabitancy or business and there is no infringement of the easement if the act complained of is not a nuisance. (*Lord Moulton.*) PETER CHARLES EARNEST PAUL *v.* WILLIAM ROBINSON. 42 Cal. 46=18 C.W.N. 933= 41 I.A. 180=27 M.L.J. 117=1 L.W. 561= 16 M.L.T. 204=(1914 M.W.N. 631= 12 A.L.J. 1166=16 Bom. L.R. 803= 24 I.C. 300=20 C.L.J. 383 (P.C.).

———S. 35—*Form of—Injunction.*

The decree issuing injunction about obstruction to light and air should be given in general terms. (*Das*, J.) JAGANARAYAN DUBEY *v.* BIDAHAT DUBEY. 25 Bom. L.R. 239= 1923 Bom. 196.

———S. 35—*Right of easement—Extent of light and air.*

It is only substantial privation of light enough to make the occupation of the house uncomfortable, according to the ordinary notions of mankind which gives rise to an actionable claim. In the case of business it is necessary that the plff. should be prevented from carrying on his business as beneficially as before. The fact that light received has become less, gives no right. The dominant owner acquires by prescription so much light as is sufficient for the ordinary purposes of inhabitancy or business according to the ordinary notions of mankind with reference to the locality and surroundings concerned and the amount received during the period of prescription is immaterial. Where the raising of a compound wall makes the habitation of a

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neighbour's room uncomfortable, so much of wall as produces this effect will be removed. (*Chatterjee and Panton*, JJ.) HIRALAL DUTTA *v.* MOHANDRA NATH BANERJI.
57 I C 706.

——S. 35—*Restriction of right—Right of way.*

It is only the inconvenience to the public that justifies restriction of right of way. (*Broadway*, J.) FATEH MAHOMED *v.* MUSSAMAT AMIR DEVI. 2 Lah. L.J. 499.

——S. 35—*Easement—Windows—Right to open—Raising of proof.*

The right to open and shut windows and shutters into adjoining land can be acquired as an easement. The owner of such an easement is entitled to restrain the servient owner by an injunction from interfering with his rights of easement by erecting a wall or a building close to the boundaries. The Court could issue a mandatory injunction directing deft. to lower the roof of his house so as to enable plff. to shut and open the window freely. (*Wallis*, C. J. *and Phillips*, J.) RANGA ROW *v.* RAMTHI LAKAMMA. 45 I C. 435 = 7 L.W. 332.

——S. 35—*Light and air—Damages.*

When by the closing of certain ventilators in a house a thorough draft for the house and effective ventilation is not allowed, the injury is so serious that the house will be substantially useless. In India the right of air is more important than the right to light; damages will be awarded when the injury is not detrimental to the existence and use of the property. (*Pratt*, J.C. *and Crouch*, A.J.C.) JADOMAL *v.* JESOMAL. 19 I.C. 843 = 6 S.L.R. 265.

——S. 38—*Extinction by release.*

An agreement to build a common wall with holes indicating permission to end the rafters of the next storey which may be constructed, does not imply consent to close ventilators by building such next storey. (*Martineau*, J.) NANDU SHAH *v.* SANT RAM. 1923 Lah. 249.

——S. 38—*Continuous easement - Cesser of enjoyment.*

Permanent alteration in the dominant heritage must be such "as to show that the dominant owner intended to cease to enjoy" the easement in future, and unless such an intention is established the dominant owner cannot be disentitled to the easement on the ground of non-user. (*Sadasiva Iyer and Napier*, JJ.) VELLA CHAMI CHETTY *v.* MUTHU CHETTY. 25 I C. 383.

——S. 38—*Easement of light and air—Agreement by one of co-owners.*

An agreement by one of several co-owners of a dominant tenement to effect a release of an easement is not effectual against the other co-owners. (*Pratt*, J.C. *and Crouch*, A.J.C.) MOLUMAL *v.* JAVHERMAL. 19 I C. 908 = 6 S.L.R. 265.

EASEMENTS ACT (V of 1882), S. 46.

——S. 43—*Additional burden--Extinguishment of easement—Alteration of structure.*

Where an additional burden alleged to have been imposed on the servient tenement could be reduced without difficulty to its original limit by the construction or alteration of a structure, the easement is not extinguished. (*Mears*, C.J. *and Banerji*, J.) RAMESHWAR DAYAL *v.* MAHARAJ CHARAN. 44 A. 343 = 20 A.L.J. 202 = 1922 All. 28.

——Ss. 43, 47—*Change in dominant heritage--Demolition of wall.*

An easement of light and air for windows is not extinguished on demolition of a wall which is re-built without delay may constitute evidence of abandonment. (*Macleod*, C.J. *and Shah*, J.) RATANLAL BHOLARAM *v.* GULAMHUSAN ABDULALLI.
24 Bom L R. 83 = 46 B. 448 = 1922 Bom. 3.

——S. 43—*Increase in burden—Onus of proof—Second appeal.*

The owner of an easement is precluded from increasing his right on the alteration of his dominant tenement. In a case, where by change of height, eaves discharge water with increased force, it is held that an additional burden is put upon the plff.'s land; in order to disprove the fact of additional burden on the servient tenement and obtain an easement over it, the owner of the dominant tenement has the onus of proof and has no right to produce expert evidence for the first time in second appeal. (*Mookerjee*, A.C.J. *and Fletcher*, J.) SURESH CHANDRA *v.* JOGENDRA NATH.
32 C.L.J. 27 = 58 I.C. 834 = 24 C.W.N. 896.

——S. 43—*Right to drop water from eaves.*

An owner of the dominant tenement had a right to drop water from his eaves at a distance of seven feet height. He increased the height three times and allowed water to drop through pipes. *Held* that his easement was extinguished by the increase in burden. (*Adami*, J.) KESHARI SAHAY SINGH *v.* HIT NARAYANA SINGH. 58 I.C. 967.

——S. 46—*Extinguishment — Merger — Landlord and tenant—Purchase of holding by landlord—Tenant continuing in possession at enhanced rent—Effect of.*

The unity of the dominant and servient estates in the same person extinguishes the easement appurtenant to the dominant estate for no person can have an easement in land which he himself owns. But unity of title of the two estates will not extinguish an easement, unless the ownership of the two estates be co-extensive equal in validity, quality and other circumstances of right. If there has been unity of possession merely and not unity of seisin for estates in fee simple an easement which has been thereby suspended will revive on severance of the union but if there has been unity of seisin for estates in fee simple and not unity of possession merely, all easements are absolutely

extinguished and will not revive, unless they are recreated on severance of the former dominant and servient estates. Where though there was an execution sale of the tenancy and a purchase by the landlord, the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation and the only visible result of the sale was that the rent was substantially enhanced. *Held*, that the right of irrigation from the landlord's tank possessed by the tenant was not extinguished but momentarily suspended and revived. (*Mookerjee and Cholzner*, JJ.) TINKARI PATHAK *v* RAM GOPAL PATHAK.
50 Cal. 336 = 36 C L J. 161 = 1923 Cal. 8.

———**Ss. 47 and 13**—*Easement of necessity — Easement — Extinguishment of—Right to take water from another's well — Dominant owner rebuilding well with permission—Fresh grant.*

The defts. had ancient right of easement to take water from a well in the plff.'s land; but that easement became extinguished by non-user for a period more than twenty years. The defts. later on repaired the well at their own expense with the permission of the plff. in order to irrigate their land and began to use the water for the purpose. The plff. sued to restrain the defts. from using the water: *Held*, that the easement was not one of necessity, but an ordinary easement liable to be extinguished by non-user for more than twenty years under S. 47. The plff. practically granted a fresh easement to the defts. (*Shah and Hayward*, JJ.) ANANTA MURARAO *v.* GANNU VITHU SURULKAR. **45 Bom. 80 = 37 I.C. 143 = 22 Bom. L.R, 415.**

——— **S. 47** — *Non-user by agreement—Effect.*

An easement is not extinguished where its user is suspended in pursuance of a contract between the dominant and the servient owners. A person who purchases the servient tenement in an execution sale with knowledge of the easement is bound thereby. (*Shadi Lal*, J.) FATEH CHAND *v.* PARASRAM.
56 P.W.R. 1918 = 46 I.C. 618 = 34 P.L.R. 1918.

———**S. 47**—*Right of Govt. to claim water-cess for water flowing though* Pattah *land—Classification of bed as* poramboke, *if necessary —Right to easement as against Government.*

Water flowing continuously through a rill, *Kuttai* and another water-course may form a natural stream in which easement rights may be acquired as against Government. Once the existence of an easement is proved as against Govt., the Govt. must show under S. 47 that it interrupted that easement more than twenty years ago or that the plff. rendered its use impossible. Mere failure on plff.'s part to repair the breach is not enough. If the Govt. wished to claim right to water flowing through *pattah* land they can do it only when classifying the bed separately as *poramboke*; otherwise the *ryot*

can retain as his property. (*Wallis*, C.J. *and Ayling*, J.) KALIANNA MUDALI *v.* THE SECRETARY OF STATE. **31 I.C. 982.**

———**S. 47**—*Easement—Light and air—Abandonment—Non-user.*

Whether a prescriptive right to light and air is lost through abandonment, depends on the intention of the parties to be gathered from the circumstances and the interval of non-user. It is not necessary for the building to enjoy the light, that it should be identical with that which acquired the right, either in structure or the purposes for which it is to be used. 30 Cal. 503; 3 C.W.N. 28, Ref. (*Manuk*, J.) MEWASAO *v.* NASIRUDDIN. **49 I C. 752.**

———**Ss. 49 and 51**—*Possession as lessee of land—Union of dominant and servient tenement.*

The possession of land claimed to be subject to an easement for more than twenty years by the dominant owner as demisee operates as a union of the dominant and servient tenement in the claimant. The easement is suspended during this time. If the suspension continues for twenty years, the easement is destroyed. The right to an easement cannot be held to have been enjoyed separately during the period of the lease. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KANDANATH *v.* CHEMBOLI VALIA VEETIL. **16 I C 378 = (1913) M.W.N. 95.**

———**S 50**—*Discharge of water over servient tenement—Whether servient owner can insist on.*

The owner of a servient tenement over which the dominant owner had acquired a right to discharge his water, cannot insist that the water should be continued to be so discharged. (*Chitty and Walmsley*, JJ.) BALLAVE *v.* BEPIN BEHARI. **45 I.C. 25.**

———**S 50**—*Servient owner if can compel dominant owner to continue to enjoy the easement.*

An easement exists only for the benefit of the dominant tenement and a servient owner gets no right to insist on its continuance or to sue for damages on its abandonment. 2 C.L.R. 141, Rel. (*Mookerjee and Beachcroft*, JJ.) ALTAFUDDIN *v.* ASOKHADEN. **17 C W N 1066 = 20 I C. 815 = 18 C.L.J 131.**

———**Ss 50 and 22**—*Scope.*

Every land-owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such use as he may desire. He may also allow it to flow away in the usual course or nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing. He cannot do this, however, by an artificial discharge upon his neighbour's land unless he has acquired such an easement which his neighbour is bound to submit to. If he should acquire such an easement, the owner of the servient tenement acquires no reciprocal rights as against the owner of the dominant tenement with regard to the flow of

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surface water, that is, water not passing through a defined channel. The owner of the servient tenement cannot compel the owner of the dominant tenement to continue the exercise of his right even where that right has been exercised uninterruptedly for over 20 years and even if its exercise should be beneficial to the servient tenement. Before the right to the use of water can be the subject of an easement by prescription or grant it must be water flowing through a defined and permanent channel. The essential features from which a grant or arrangement whereby the right claimed may be presumed to rest in some legal origin are that there should be a permanent channel, artificial or otherwise, or indeed a defined channel of any sort conducting the overflow of water and that the overflow should be controlled or directed in any particular course. 6 I. A. 33, Foll. (*Dawson Miller*, C.J. *and Mullick*, J.) MT. SARBAN *v.* PHUDO SAHU. **4 P L T 81 = 2 P. 110 = (1922) Pat. 305 = 1923 P. 65.**

——S. 51—*Dominant tenement rebuilt—Additional burden—Whether can be imposed.*

When a dominant tenement is rebuilt, the dominant owner has no right to impose a greater burden on the servient tenement than the prescriptive quantity of the right enjoyed. Blocking up an old window and building another of the same dimensions in another place is an imposition of a burden on the servient tenement which was not existing till then. But the right of the dominant owner under the common law to free access of light and air through an ancient window is not lost by shifting the window backwards or forwards (*Pratt*, J C. *and Crouch*, A.J.C.) PREMJI LADHA *v.* VISRAM ANNUL. **33 I.C. 615 = 9 S.L R. 101.**

——S. 52—*Licensee—Rights of.*

A licensee is a person without any title and has no interest in the land. (*Tudball and Walsh*, JJ.) BASUDEO RAI *v* DWARAKA RAM. **38 All. 178 = 32 I C 346 = 14 A L.J. 137.**

——Ss. 52 and 60—*License—Weighman in a market—Allowed to continue as such in a new market—Exclusion privileges.*

A weighman in an old market, allowed by Govt. to continue the same calling in the new market, does not acquire any exclusive privilege and is only a licensee. (*Richards*, C.J. *and Banerji*, J.) SECRETARY OF STATE *v.* KANHAIYALAL. **23 I.C. 922 = 12 A.L J. 447.**

——S. 59—*License — Enjoyment for a long time—No adverse possession.*

A licensee cannot by enjoying the license for any length of time acquire rights adverse to that of the licensor. Where certain tenants of a Zamindar built thatched sheds on waste lands with his permission but these sheds were not appurtenant to their holdings, the tenants did not acquire a right adverse to the Zemin-

EASEMENTS ACTS (V of 1882), S. 60.

dar and the latter could revoke the license at his pleasure. (*Mears*, C. J *and Gokul, Prasad*, JJ.) BHOJ RAJ *v.* HARDEVA. **44 A 726 = 20 A L J. 608 = 1923 All. 140 (1).**

——Ss 59 and 60—*Transferee of licensor—Right of—Revocation.*

The transferee of a licensor cannot revoke a license, when the licensee has effected a work of permanent character and incurred expenses. (*Chamier and Piggott*, JJ.) RAS BEHARI LAL *v.* AKHAI KUNWAR. **37 All. 91 = 26 I.C. 446 = 13 A.L J. 1.**

——S. 60 — *License when revocable—Licensee not liable to ejectment on denying Licensor's title.*

A licensee in possession does not, like the tenant, by denying title of the grantor of the license forfeit the license and become liable to ejectment. 15 A.L.J.R. 592, Rel. (*Stuart*, J.) MT. DURGA *v.* BABU RAM. **1923 All. 403.**

——S. 60 — *License — Revocation of—Coupled with grant.*

Where a license coupled with a transfer of property is granted, the transferee of the licensor is not entitled to revoke such license. The law on the subject is the same after the passing of the Act V of 1882. 16 C. 649, Ref. (*Knox*, J.) PARTAB SINGH *v.* DHUM SINGH. **30 I.C. 581 = 13 A L.J. 886.**

——S. 60—*Licensor and licensee—Obligation of licensor — License coupled with interest.*

The grantor of a license is under an obligation to place the licensee in a position to enjoy the license. An appropriation of the land licensed to any use inconsistent with the enjoyment of the license works a revocation and the licensee may maintain an action for damages against the licensor for breach of contract in unlawfully revoking it. A license to catch elephants for consideration is not revocable for it is a license coupled with an interest. Where there is a grant of an exclusive right to catch elephants within a specified area for a specified period it does not follow as a matter of course that the grantee would be entitled to exclusive occupation of the entire territory during that time. (*Mookerjee and Chotzner*, JJ.) KINGSLEY *v.* THE SECRETARY OF STATE FOR INDIA. **36 C L J 271 = 1923 Cal. 49.**

——Ss. 60 and 64—*Building license—Effects of revocation.*

A licensee permitted to build a house and reside therein is entitled to be indemnified if evicted by the licensor's successor. A bare license may be revoked at the grantor's will and on reasonable notice, but a license coupled with grant is irrevocable. A license, allowing structures to be built, cannot be revoked unless the licensee is compensated. (*Mookerjee and Beachcroft*, JJ.) MOTI LAL ROY *v.* KULU MANDAL. **19 I.C. 853 = 19 C.L.J. 321.**

EASEMENTS ACT (V of 1882), S. 60.

———S. 60—*License—Breach of contract—Revocation—Damages*

A licensee is entitled to damages for breach of any contract or for an improper revocation of his license in a proper case; the Court will allow revocation only on payment of the expenses incurred by the licensee. (*Spencer and Krishnan, JJ.*) ZAMINDAR OF BODOKIMIDI *v.* SEESIL KUMAR LAHIRI. **49 I.C. 811 = (1918) M.W.N. 772.**

———S. 60—*License—Death of licensor—Revocation.*

Under the Easements Act a license is of a personal character not merely as regards the grantee, but also as regards the grantor. It ceases the moment the property passes to another from the grantor whether by inheritance or otherwise. The heirs of the licensor may treat the licensee as a trespasser and eject him without notice of revocation. (*Kotval, A.J.C.*) KARELAL *v.* BADRIPRASAD. **18 N.L.R. 76 = 1922 Nag. 162.**

———S. 60—*License with void grant—When revocable.*

A license coupled with a void grant is revocable save (1) when the licensee entered into occupation and paid rent and (2) when the licensee acting on the license has executed a work of permanent character, and incurred expense in so doing. (1852) 21 Ch. D. 9; (1901) 2 Ch. 598 and 8 A. 60, Ref. to. A license is in its nature revocable but a license coupled with a grant is irrevocable. 34 I.C. 471, Ref.; 16 Cal. 640. (*Stanyon, A.J.C.*) NARSINGDAS *v.* RATAN LAL. **34 I.C. 471 = 12 N.L.R. 75.**

———S. 60—*Execution of permanent works by licensee on land of licensor—No right to revoke license.*

Where plff. allowed deft. to execute on plff.'s land an irrigation scheme of considerable expense and permanent benefit to a very large number of villages, *held*, that the agreement created a license which could not be revoked at the instance of the plff. (*Jwala Prasad and Imam, JJ.*) THE SECY. OF STATE *v.* HIRA NAND JHA. **47 I.C. 166.**

——— S. 60 (b)—*Revocation of license.*

A license cannot be revoked during licensee's lifetime when the licensee has made permanent improvements. (*Mitra, A.J.C.*) MADHUSUDAN DAS *v.* BISSUJI. **48 I.C. 723.**

———Ss. 63 and 64—*License for building house—Infringement of terms.*

In the absence of anything showing the restriction as to the method of building by a licensee, of a land set for building purposes, there is no warrant to hold that the license was granted to build in a particular manner. (*Tudball and Kanhaiya Lal, JJ.*) GHOREY *v.* SHIBLAL. **18 A.L.J. 781 = 58 I.C. 410 = 2 U.P.L.R. (All.) 266.**

ECCLESIASTICAL LAW.

———S. 69—*Eviction—Notice to quit.*

A suit for ejectment of a licensee is maintainable without notice to quit even though the licensee has erected huts on the land. (*Richardson and Walmsley, JJ.*) GOBINDA CHANDRA GHOSE *v.* NANDADULAL SUT. **27 C.L.J. 523 = 45 I.C. 317.**

EASTERN BENGAL TENANCY ACT (VIII OF 1885).

———S. 22 (2)—*Bengal Tenancy Act, sch. III, art. 3—Limitation.*

Where S. 22 (2) of the Eastern Bengal Tenancy Act applies, the special rule of two years limitation in sch. III. art. 3 of the Bengal Tenancy Act does not apply. (*Woodroffe and Mullick, JJ.*) INUTULLAH DAFTRY *v.* MOISON ALI. **25 I.C. 414.**

———S. 147-A—*Rent suit—Compromise decree—Additional land given and new rent settled—Non-compliance with section—Objection in execution cannot be raised.*

In a suit for rent, a decree was made on compromise and the tenant took some additional land and a rent was fixed for the area formerly held by him together with the added area. When execution was sought objection was taken on the ground of non-compliance with S. 147-A of the Eastern Bengal and Assam Tenancy Act. *Held*, the objection raised as to the validity of the decree could not be raised in execution proceedings. 17 C.W.N. 496, Dist. (*Chatterjee and Newbould, JJ.*) HEM CH. CHOUDHURY *v.* CHANDRA MOHAN NAMODAS. **60 I.C. 204 = 24 C.W.N. 1070.**

———S. 170 (4)—*Non-transferable occupancy holding—Purchaser—Execution sale—Rights of landlord.*

The section does not debar the landlord when he has himself purchased the holding at a sale in execution of a decree of arrears of rent due thereon, from challenging the right of the purchaser, not recognised by him, to make the deposit on the ground that as against him such purchasar has acquired no title and therefore cannot apply under O. 21, r. 89, C.P.C. (*Chatterjee and Greaves, JJ.*) ABDUL RAHMAN SARKAR *v.* PROMA BIHARI DUTT. **22 C.L.J. 108 = 28 I.C. 182 = 20 C.W.N. 40.**

EAST INDIA COMPANY.

See (1) GOVT. OF INDIA ACT.
(2) SECRETARY OF STATE.
(3) TORT.

EAVES.

See EASEMENT.

ECCLESIASTICAL LAW.

——— *Established church—Ordinary Courts of law—Roman Catholic Church—Voluntary association—Rules of Branch association different from parent body—Custom—Proof of.*

The Church of England is an established church and is therefore subject to the ordinary

ECCLESIASTICAL LAW.

Courts of law in matters temporal as well as matters of doctrine. The Roman Catholic Church is not an established Church but a voluntary association and any member who joins that church will be bound by any rules which it has framed for its internal discipline and management. If a branch of voluntary association has adopted rules which materially differ from those of the parent body, the members of that association will not be members of the parent body but will be an independent organisation with their own rules. The Canon Law recognises no distinction between the spiritual and temporal powers of the Papacy and the Episcopate, and a member of any church which is part and parcel of the Universal Catholic Church would be bound by the Canon Law. If a church while adopting in the main the doctrine of the Catholic Church has yet framed rules different from the rules of the Catholic Church in matters of discipline and management, those rules must be proved in the same way in which a custom would have to be proved in a Court of Law. Questions of custom though they may, in the end, become questions of law are at the outset necessarily questions of fact. (*Ayling and Coutts-Trotter*, JJ.) GASPARI LOUIS *v.* REV. FR. C.P. GONSALVES. **35 M.L J. 407 = (1918) M.W.N. 842 = 47 I.C. 941 = 8 L W. 208.**

——— *Congregation—Right of — Pollution of church—Powers of Bishop.*

According to English law, customary rights have all features in common *viz.*, that however large the community enjoying them and however frequent the exercise of the right, they never amount to a continuous and complete deprivation of the owner of the soil of his natural right of user and further the custom has always arisen in the close and has no other origin The congregation has no power to select what canons to follow and what to disregard or to adopt rules for the conduct of ceremonial observances at variance to the canons of the church so long as they profess allegiance to the same. 1 Moo. P.C. 411 (N.S); 7 A.C. 484, Expl. A Bishop, with absolute right of control over his flock cannot contract himself out of his rights prospectively so as to prevent his successors from exercising the same authority. The sentiment of pollution in a Christian church indulged in by so called caste Christians is not such spiritual or temporal injury as can be recognised as a legal injury giving rise to a Civil cause of action. (*Sadasiva Iyer and Napier*, JJ.) KATHALAI MICHAEL PILLAI *v.* J.M. BARTHE, **39 Mad. 1056 = 19 M L T. 249 = 30 M L.J. 423 = 3 L W 348 = 34 I.C. 557 = (1916) 1 M.W.N. 307.**

EDUCATION, EXPENSES OF.

See HINDU LAW—JOINT FAMILY.

EJECTMENT.

See also LIM. ACT, ARTS, 142 AND 144.

EJECTMENT—Burden of Proof.

BURDEN OF PROOF.
CO-SHARERS.
DECREE, FORM AND EFFECT.
DEFENCE.
ENDOWMENTS.
JOINDER OF PARTIES.
JUS TERTII.
NOTICE.
PLEA OF POSSESSION.
PROOF OF TITLE.
TENANTS,
TRESPASSERS.
MISCELLANEOUS.

Burden of Proof.

———*Burden of proof—Cr. P.C., S. 145—Survey proceedings.*

Where plaintiff failed in Cr. P.C. S. 145 proceedings to prove possession and also in survey proceedings. *Held*, the onus thus lay heavily on the plaintiffs to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings (*Mr Ameer Ali*). (RAJA INDRAJIT PRATAP BAHADUR SAHI *v.* AMAR SINGH. **45 M.L J. 578 = 18 M.W.N. 728 = 25 B L.R. 1259 = 4 P L.T. 447 = 1 Pat. L R. 345 = 21 A.L.J. 554 = 2 Pat. 676 = 50 I.A. 183 = 33 M.L.T. 233 = L.R. 4 A (P.C.) 123 = 5 L.R. P.C. 8 = 28 C.W.N. 277 = 1923 P C. 128.**

———*Burden of proof—Title—Proof of—Essential.*

In a suit in ejectment the Court is not concerned with the title of deft. unless plff. proves his own title. In a suit for recovery of temple and its properties as *mahant*, the plff. must prove his appointment. (*Sir John Edge*). LAHAR PURI *v* PURAN NATH. **37 All. 298 = 42 I A. 115 = 19 C.W.N. 718 = 21 C.L J 499 = 17 Bom. L R. 475 = 18 M.L.T. 39 = 29 M.L.J. 75 = 2 L W. 589 = 29 I.C. 724 = (1915) M.W.N. 526 (P.C.).**

———*Burden of proof—Title—Strict proof.*

In an ejectment suit plff. must strictly prove his title. (*Mr. Ameer Ali*). RAMCHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. **42 Cal. 884 = 41 I.A. 290 = 27 M.L.J. 333 = 18 C W N. 1154 = 1 L W. 831 = 16 M.L.T. 447 = (1914) M.W.N. 838 = 10 N.L.R. 112 = 16 Bom. L R. 863 = 12 A L J. 1281 = 26 I.C. 290 = 20 C.L.J. 573 (P.C.).**

———*Burden of proof—Title of plaintiff—Strict proof of--Essential--Defect in title appearing on the records—Duty of Court to take note of.*

A plff. in an action of ejectment must recover by the strength of his own title and not of the weakness of his adversary. A plff. suing to recover possession on a title derived from an agreement with the owners must prove his present right to possession under the agreement. Any other right or interest that he

EJECTMENT—Burden of Proof.

may have in the subject-matter of the suit is irrelevant. Where the object in the plff.'s title appears on the face of the documents on which the plff.'s case rests, the Court would dismiss the suit in ejectment, although the point had not been fully raised in the Court appealed from. (*Lord Atkinson*) BASANT SINGH *v.* MAHABIR PERSHAD.

35 All. 273 = 40 I A. 86 = 16 O.C. 136 = 25 M L J. 301 = 14 M L.T. 64 = 17 C W.N. 669 = (1913) M.W N 481 = 11 A.L J. 469 = 17 C.L J. 566 = 19 I C. 340 = 15 Bom. L R. 526 (P.C.)

[An appeal from 12 I.C. 347 = 14 O.C. 299.]

——*Burden of proof—Suit for ejectment—Necessary proof.*

Where the plffs. who are raiyats allege termination of tenancy of their under-raiyats by notice, they must not only prove that they are landlords and the defts. their tenants, but also the status, *viz.*, that they are raiyats and the defts. their under-raiyats whose tenancy can be and is terminated by notice. (*Ashutosh Mookerji*, A.C.J. *and Fletcher*, J.) ABHOY CHARAN DATTA *v.* FUTTARI DASI.

57 I.C. 833.

——*Burden of proof — Title — Proof of, essential.*

Failing to prove his title, plff. could not recover the property even though the defts. were in possession without title. (*Chatterjee and Duval*, JJ.) AITI KOCHUNI *v* AIDEW KOCHUNI **34 I C. 695 = 24 C W.N. 173.**

——*Burden of proof—Title—Proof of—Shifting of onus.*

Where the plff. sues for ejectment on establishment of his title the onus is primarily on him to prove his title. But when he makes out a *prima facie* case for establishment of his title and deft. seeks to contradict his case by establishing title of his own, it is for deft. to prove the title he sets up, whether it be *Lakheraj* or any other kind of title. (*Newbould*, J.) DURGA CHARAN BISWAS *v.* KAILASH CHANDRA DAS. **34 I.C. 645.**

——*Burden of proof—Plff.'s duty.*

The purchaser of an estate, at revenue sale cannot by suit oust the deft. from lands which though not included in the estate claimed by them, are equally outside the estate purchased, on the principle that the plff. suing in ejectment must prove his own title. (*Mookerjee and Roe*, JJ.) BAIKUNTHA NATH RAI *v.* BASANTA KUMARI DASI. **34 I C. 946 = 23 C.L J. 151.**

——*Burden of proof—Title—Proof of onus on plff.*

In a suit in ejectment plff. has to recover on the strength of his own title and cannot rely on the weakness of the deft.'s title. (*Mookerjee and Chapmon*, JJ.) NOGENDRA MOHAN RAY *v.* PYARI MOHAN SAHA. **43 Cal. 103 = 20 C.W.N. 319 = 30 I.C. 420 = 21 C L J. 605.**

EJECTMENT—Burden of Proof.

——*Burden of proof—Title—Proof of, by plaintiff, essential.*

In a suit in ejectment the plff. must succeed on the strength of his own title. (*Ghosh and Pratt*, JJ.) MOHAMED FAIZ CHOWDHURY *v.* KASHI NATH. **27 I.C. 13 = 20 C.L.J. 310.**

——*Burden of proof — Title—Proof of—Onus.*

In a suit for ejectment, the plff. must prove his title and possession within the statutory period. The burden of proof may, however, be shifted to the other side if he starts with a presumption in his favour. (*Carnduff and Chapman*, JJ.) GOPAL MONI *v.* KALI CHARAN. **16 I.C. 17.**

——*Burden of proof—Title—Plff. must establish title.*

In a suit for possession the plff. must establish a title superior to that of the defts. by proof of the most unimpeachable character. (*Shah Din*, C.J. *and Le Rossignol*, JJ.) SAFA CHAND *v.* LAJWANTI **42 I C. 103 = 150 P.W.R. 1917.**

——*Burden of proof—Trespasser.*

A plff. must prove his own title before ousting trespasser even though the latter has no title. (*Chevis*, J.) PREM SINGH *v* MOKAND SINGH. **30 P.W R. 1912 = 13 I.C 62 = 22 P L.R. 1912.**

——*Burden of proof—Shifting of onus.*

In an ejectment suit, the burden is on the plff. to prove his title, which if *prima facie* proved the onus shifts on the deft. to discredit the title-deed. 2 C. L. R. 48; 8 Cal. 759, Dist. (*Sankaran Nair and Ayling*, JJ.) SUKIRA NAINER *v.* VIRASWAMI PILLAI. **23 I.C. 815.**

——*Burden of proof.*

In an ejectment suit by an *inamdar* the burden of proving the title is on him. (*Bashyam Aiyangar and Moore*, JJ.) VENKATA SUBBARAYA *v.* DARAPPAREDDI. **9 I C 566 = 9 M L.T. 218.**

——*Burden of proof.*

In a suit to recover possession on the ground of dispossession, the burden of proving possession within twelve years from the commencement of the suit is on the plff. He must succeed on his own title and must not rely on the defect in title of his adversary. (*Drake Brockman*, J. C.) CHAMPAT *v.* LAXMI NARAYAN. **48 I C. 70.**

——*Burden of proof—Title and possession.*

Where the action is in ejectment it is incumbent upon the plaintiffs not only to prove their title but also they have been in possession within twelve years of the date of the suit. (*Das and Kulwant Sahay*, JJ.) BABU CHATRAPAT PRATAP BAHADUR SAHI *v.* C. G. LEES. **1 P L.R. 322 = 4 P L T 487 = 1923 P. 558.**

EJECTMENT—Burden of Proof.

———*Burden of proof—Title—Possession—Proof of—Presumption.*

It is only in cases where there is no evidence of the plaintiff as to dispossession or, what amounts to the same thing, where the evidence is valueless, that the plaintiff fails to make out his case by merely proving that he had an antecedent title and possession. If from the evidence given by both sides the Court has a difficulty to come to a definite conclusion or if the Court considers that evidence is not altogether satisfactory, in such circumstances, the Court can give weight to the probabilities of the case or to any presumption which might properly arise from the fact that the plaintiff had previously been in possession and had title (*Miller*, C.J *and Mullick*, J.) TIAN SAHU *v.* MULCHAND SAHU. **2 P. 1= 3 P.L.T. 460=1922 P. 432.**

———*Burden of proof—Onus on defendant to prove better title.*

Where a person in possession of a property is dispossessed by another the onus is on the latter to show that he had better title than the former. 2 P.L.J. 61, Ref. (*Jwala Prasad*, A.C. J. *and Das*, J.) AWADH BIHARI DIKCHIT *v.* JITU SAHU. **64 I.C. 243.**

———*Burden of proof—Plff. to rely on the strength of his own title.*

It is the strength of his own title, and not the weakness of the deft.'s title, that should support the plff. in a suit for ejectment. (*Jwala Prasad*, J.) GHASITA SINGH *v.* BHAGMANI KOER. **37 I.C. 924.**

———*Burden of proof—Title—Proof.*

If a person suing in ejectment wants to succeed, he must strictly prove his title (*Chamier*, C.J. *and Jwala Prasad*, J.) ADIT NARAYAN SINGH *v.* KAHABIR PRASAD TEWARI **1 P.L.J. 324=(1917) Pat. 12= 38 I.C. 687=2 P.L.W. 317.**

———*Burden of proof—Deft.'s title not lost by waiver of rights by a third party.*

In a suit for ejectment plff. must prove his own title. No title can be acquired against the deft., by a waiver of rights by a third party not binding on that party, the more so, when such waiver is, to the knowledge of the Court, false. (*Roe and Jwala Prasad*, JJ.) DURGA BAI *v.* SOBBA SINGH. **34 I.C. 827.**

———*Burden of proof—Proof of title—Onus on plaintiff.*

A person not in possession ought to show a better title to the property from which he seeks to eject the person in possession. (*Ormond*, J.) MAUNG PO JIN *v.* MG NI. **29 I.C. 888=8 Bur. L.T. 72.**

Co-sharer.

———*Co-sharer—Agreement to finance litigation—No present interest in property—No right to sue in ejectment.*

EJECTMENT—Co-sharer.

A plff. suing to recover possession on a title derived from an agreement with the owners must prove his present right to possession under the agreement. The agreement in question provided that the respt. was to be a co-sharer with two plffs., that he would finance the litigation by them and that in the event of success he would be entitled to the proprietary possession of the share stipulated. *Held*, that the agreement conferred on the respt. no present right in the property in suit and that he could not join in bringing or continue a suit in ejectment in respect thereof. 32 I.A. 113. Dist. (*Lord Atkinson*). BASANT SINGH *v.* MAHABIR PERSHAD. **35 All 273=40 I.A. 86= 16 O.C. 186=25 M L J 301=14 M L.T. 64= 17 C.W.N 669=(1913) M W N. 481= 11 A L J. 469=17 C L J 566= 19 I C. 340=15 Bom L.R. 525 (P.C.).**

[On appeal from 12 I C. 347=14 O.C. 299.]

———*Co-sharer—Trespasser on land.*

One of the co-sharers can sue to eject a trespasser from the joint land. (1901) A.W.N. 36, Foll. (*Lindsay and Kanhaiya Lal*, JJ.) SRI THAKUJI *v.* HIRA LAL. **44 All. 634= 20 A.L.J 609=L.R. 3 A. 581=1922 All. 408.**

———*Co-sharers—Suit by one of several persons jointly interested.*

One of several persons jointly interested is entitled to sue a trespasser where the removal of the trespasser is necessary for the enjoyment by the plff. of his rights. (*Chamier*, J.) ROHAN SINGH *v.* ASHANI BEGAM. **17 I.C 469= 10 A.L.J. 518.**

———*Co-sharers—Right of one sharer to sue—Joint possession.*

A person entitled to an undivided half-share of a piece of land cannot sue to eject any body from the whole of it. But he can sue for recovery of joint possession of the eight annas share and to enforce his right by a partition if he was not satisfied with the delivery of possession of an undivided half-share. (*Coxe and Chatterjee*, JJ.) GAJADHAR AHIR *v.* BHIKARI LAL. **27 I.C. 228=18 C.W.N. 1011.**

———*Co sharers — Co-sharers landlord whether can eject tenant.*

A co-sharer landlord cannot by himself sue to eject a tenant but he can so sue to eject a trespasser. (*Coxe*, J.) GANODANNESSA BIBI *v.* MAKSEDDANNESSA BIBI. **11 I.C. 84.**

———*Co-sharers—Right of suit—Co-owner in possession.*

An ejectment suit by one co-owner in whose sole name the lease was granted and by whom exclusive title was set up on the basis of the lease, is not maintainable although if he had not questioned the title of the other co-owners he might have been considered as holding on his own behalf as well as of the others. The consent of the others given in second appeal would not matter. (*Chatterjee*, J.) BROJONATH *v.* UDAY CHANDRA. **9 I.C. 487.**

EJECTMENT—Co-sharers.

———*Co-sharer.*

The question whether a co-sharer occupying a portion of the joint land without denying the joint character thereof should be allowed to retain it until partition in the case of *abadi* land when that land has been reduced to a minimum area barely sufficient for the common purposes of the village was raised but was not decided. The highest Court of appeal may allow the amendment of the plaint. (*Shadi Lal*, C.J. *and Leslie Jones*, J.) MANJI ASHAQ ALI *v.* GHULAM MAHOMED.
3 Lah. L.J. 75.

———*Co-sharers—Co-heirs—Suit by some only—Relief.*

Where some only out of several heirs of a deceased proprietor bring a suit for possession of the property left by him they can recover their shares of the estate and not the whole estate. (*Shah Din*, C.J. *and Le-Rossignol*, J.) BHARI *v.* KHANNU. **44 I.C. 162=7 P.R. 1918.**

Decree, form and effect.

———*Decree, form and effect--Decree for redemption.*

In a suit for ejectment the Privy Council passed a decree for redemption of the mortgages to which the property was held to be subject on terms as to costs with a view to the shortening of litigation. (*Lord Shaw*). RICHARD ROSS SKINNER *v.* KUNWAR NAUNIHAL SINGH.
35 All. 211=40 I.A. 105=25 M.L.J. 111=(1913) M.W.N. 500=13 M L T. 488=11 A.L.J. 494=17 C.L.J. 555=16 Bom L.R. 502=19 I.C. 267=17 C.W.N. 853 (P.C.).

———*Decree, form and effect—Failure to prove exclusive title by co-owner—Joint possession, if could be decreed.*

A decree for joint possession of joint property can be given where plaintiffs alleged but failed to prove exclusive title to certain fraction of the joint estate and where the defendants asserted their exclusive title but it was found that they have no such exclusive title. (*Shadi Lal*, C.J. *and Leslie Jones*, J.) MANJI ASHAQ ALI *v.* GHULAM MAHOMED. **3 L L.J. 75.**

———*Decree, form and effect.*

In an ejectment suit the decision of the Rev. Court that the plff. is an under-proprietor simply means that he has made out a *prima facie* claim to under-proprietary rights and it is no bar by the deft. to a suit in the Civil Court for a declaration that plff. is not an under-proprietor. (*Holms*, S.M.) KRISHNA PAL SINGH *v.* RAM DULARI. **34 I.C. 753=3 O.L.J 234.**

———*Decree, form and effect— Suit for possession.*

In a suit for ejectment from and possession of a house, the decree should be for possession of the whole and not a part. (*Kincaid*, J.C. *and Kennedy*, A.J.C.) HUSSAN LAL MUHAMMAD *v.* BACHAL AJI NATH. **62 I.C. 860=15 S.L.R. 79.**

EJECTMENT—Joinder of Parties.

Defence.

———*Defence—Notice — Rent— Entry — Wrong.*

When there has been no enhancement of rent in fact, but simply by a clerical error the rent is shown as enhanced in the partition papers, the tenant cannot avail of the wrong entry and set up a fresh statutory period from the time of the partition, though in the notice of ejectment served on him the amount of rent entered in the partition papers is put down. (*Campbell*, J.M.) ACHAIBIR SINGH *v* DALIP SINGH. **33 I.C. 234=2 O L.J. 717.**

———*Defence—Plea of permanent tenancy—Court, whether bound to enquire.*

In a suit in ejectment, where the deft. sets up a plea of permanent tenancy the Court is bound to enquire into its truth and record a finding thereon. (*Maung Kin*, J) MA SHWE YAT AUNG *v.* MAUNG DALI.
9. Bur. L.T. 152=33 I C. 858=9 L.B.R. 27.

———*Defence—Grounds.*

A purchaser under an unregistered sale of immoveable property let into possession by the vendor, cannot plead his possession as a defence to a suit in ejectment by one having legal title to recover. 29 Mad. 336. Foll. (*Maung Kin*, J) MAUNGBO *v.* MAUNG TUN BYU. **33 I.C. 121.**

Endowments.

———*Endowments—Tenants on—Equitable relief.*

In a suit for ejectment, the defts. building shops on wakf property are entitled to the value of the buildings when *Mutawalli* allowed them to remain for a long time. (*Chevis and Leslie Jones*, JJ.) FAZI ILAHI *v.* ZAFAR ALI.
32 I.C. 558=36 P.W.R. 1916.

———*Endowments—Title—Invalid alienation.*

An alienee, who does not obtain any valid rights under the alienation (*i.e.*) transfer of *debutter* property cannot maintain a suit for possession. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KOOLAPPA ROWTHER *v* APPU ASARI. **17 I.C. 736.**

———*Endowment—Ejectment suit—Proof.*

The plff. in an ejectment suit for recovery of property alleged to have been appropriated by way of endowment for the upkeep of endowed property must make out as strong a case as one who wishes to set aside alienation of endowed property. (*Lindsay*, J.C. *and Stuart*, A.J.C.) ABDUL SHAFUR *v.* SHIAM SUNDAR DAS. **17 I.C. 303=16 O.C. 76.**

Joinder of Parties.

———*Joinder of parties—Suit—Parties.*

In a suit for ejectment all the parties in actual possession whom it is desired to eject, should

EJECTMENT—Joinder of Parties.

be made defts. (*Richardson and Beachcroft*, JJ.) SATISH CHANDRA SARKAR *v.* BROJO GOPAL DUTTA. **46 I.C. 104=22 C.W.N. 807.**

———*Joinder of parties—Necessary parties.*

In an ejectment suit the transferee of the tenancy right and tenants holding as transferee's sub-tenants are necessary parties. (*Holmwood and Imam*, JJ.) MEAH UZIR ALI SARDAR *v.* SAVAI BEHAR. **43 Cal 938=32 I.C. 791=20 C.W.N. 547.**

———*Joinder of parties—Person in receipt of rents and profits.*

All persons who are actually in physical possession of the property should be made defendants to a suit for ejectment. It is neither necessary nor proper to join any person who is merely in receipt of the rents and profits of the land. (*Ross*, J.) BABU POONIT SINGH *v.* KAMAL SINGH. **72 I.C. 1038.**

———*Joinder of parties — Non-joinder of person under whom defendant holds—Effect.*

A decree for possession can be given in an ejectment suit against the person in juridical possession, even if for some reason or other, the plaintiff does not implead or claim any relief against the party who has put the defendant in actual possession of the land. (*Das and Adami*, JJ.) BHAGWATI KUER *v.* JAGDAM SAHAY. **3 P.L.T. 429=6 P L J. 604=1922 P. 352.**

Jus tertii.

———*Jus tertii—Co-sharer in possession of whole.*

Plea of jus tertii cannot be set up by a trespasser against a lessee from one who obtained title to the property by adverse possession. (*Fletcher and Smither*, JJ.) BASI RUDDI SHEIKH *v.* MOBARAK MUNSHI. **40 I.C. 157.**

———*Jus tertii—Plea of.*

A person claiming as an heir to the last male owner is entitled in a suit by Crown for ejectment on the ground of escheat to plead jus tertii. 12 M.I.A. 448, Ref. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SECRETARY OF STATE *v.* SUBRAYA KARANTHA. **18 M L T. 804=2 L.W. 1175=31 I C. 590=(1915) M.W.N. 962.**

———*Jus tertii — Trespass by stranger—Possession—Title.*

As against a trespasser possession is title if it was obtained peacefully and jus tertii could not be set up. *Quære.*—Whether if plff.'s possession was forcible, he could recover possession against deft. (*Sadasiva Iyer and Napier*, JJ.) NALLAGONDAPEDDA *v.* ASUPALLEE BUDDA REDDY. **2 L W. 912=18 M L.T. 343=31 I.C. 55=(1915) M.W.N. 815.**

———*Jus tertii—Title—Plaintiff must prove.*

A plaintiff seeking to oust a trespasser in possession must prove his own title and cannot rely upon the defendant's failure to plead

EJECTMENT—Plea of Possession.

jus tertii. (*White*, C.J., *and Sankaran Nair*, J.) KANAKAMMAL *v.* ANANTHAMATHI AMMAL. **25 I C. 901=37 Mad. 293.**

———*Jus tertii—Joint trespassers.*

A deft. who is sued as trespasser can rely upon the title of his co-deft. if both are alleged to have been acting in concert, even though his own derivative title is not proved. (*Mitra*, A.J.C.) BHAO SINGH *v.* MAHIPAT. **47 I C. 950.**

———*Jus tertii—Third party disclaiming interest.*

Where the plff. sues to eject the deft. and the deft. sets up the title of a third person, the mere fact that third person disclaims his right is no ground for decreeing plff.'s suit in the absence of proof of his title. (*Lindsay*, J C.) TILAKRAM *v.* SEETARAM. **30 I C. 803=2 O.L.J. 388.**

Notice.

———*Notice—Validity—Waiver.*

In cases not governed by B.T. Act or T.P. Act, a notice to quit must be reasonable and need not terminate the tenancy at the end of the year and the final Court of facts is to determine these points. Mere acceptance of rent due for a period prior to the notice does not amount to a waiver. (*N.R. Chatterji and Newbould*, JJ.) RATNESWAR DAS *v.* SREE KAMAL DEB ADHIKAR GOSWAMI. **63 I.C. 191=33 C.L.J. 299.**

———*Notice—When invalid.*

A notice in ejectment is bad wherein the plots of land specified do not completely cover the area specified. (*Holms and Campbell*, JJ.) SURAJ BALI *v.* MANAGER OF NANPARA ESTATE. **33 I.C. 168=2 O.L.J. 712.**

Plea of Possession.

———*Plea of possession and title—Title—Strict proof of, essential—Confused boundaries.*

In 1903 plffs. sued to eject defts. from certain lands as being part of their *mouzah*. Both parties claimed under leases granted by the Zemindar dated 1834 and 1838 respectively. The locality except as a beel was already unknown at the time of the *Takbust* survey in 1856, and the very name disappeared in 1880. The High Court in decreeing the plff.'s suit determined its area not by any positive finding of its boundaries but by conjecturing the boundaries of deft.'s land, the defts. being the parties in possession. *Held*, reversing the High Court's judgment that the plffs. must fail. (*Lord Phillimore*) GOPALCHANDRA CHAUDHARI *v.* RAJANI KANTA GHOSE. **47 Cal. 413=24 C.W.N. 333 (P.C.).**

———*Plea of possession—Plff.'s title.*

The person who is in possession of the trust property, can successfully defend his possession against heirs of the settler whose rights

EJECTMENT—Plea of Possession.

under resulting trust are barred by limitation. (*Scott*, C. J. *and Chandavarkar*, J.) MAHOMED IBRAHIM *v.* ABDUL LATIF.
37 Bom. 447=17 I C. 689=14 Bom. L.R. 987.

———*Plea of possession or title—Title—Strict proof necessary.*

In an action in ejectment where the plff. has proved his alleged title, the Court shall not refuse him relief on a ground not only not urged by the deft. but wholly inconsistent with the defence taken by him in his written statement. (*Mookerjee and Beachcroft*, JJ.) ISHAN CHANDRA DHUPI *v.* NISHI CHANDRA DUPI. **22 C.W.N. 853=41 I.C. 378=29 C L J 1.**

———*Plea of possession—Title—Strict proof essential.*

A person in possession can resist a suit for ejectment against all but the true owner, though his possession is that of a trespasser. He can resist the suit on the ground that the assignment to the plaintiff is a sham transaction. 15 Bom. 1, Rel. upon; 36 B. 37, Expl. (*Ayling and Hannay*, JJ.) RAJAMMAL *v.* MAHADEVA YOGI. **1 L W. 777=(1914) M.W.N. 717=25 I C 657=27 M.L J. 445.**

———*Plea of possession—Possessory title—Government—Possession prior to suit—Presumption of title.*

Plff. was entitled to the same presumption of title against Govt. as against any one else created by previous possession, and notwithstanding the levy of penal assessment, the Govt. must prove antecedent possession in Govt. or displace the presumption of title arising from plff.'s possession. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KAMBHAMPALY VENKATASUBBIAH *v.* SECRETARY OF STATE. **16 I.C. 589=(1912) M.W.N. 881.**

———*Plea of possession—Possessory title—Decree on.*

Where it appears that plff. in possession had been dispossessed by deft. and at the date of suit deft. had not acquired a title by prescription and neither party is found to have a good title, plff. as the prior possessor, has a right to recover possession from the deft. who cannot show a better title. 26 M. 514; 10 Bom. L.R. 571; 29 A. 52; (1907) A.C. 73, Rel.; 26 C. 579, Dis. (*Sundara Aiyar and Ayling*, JJ.) KALYANAM BASAVAYYA *v.* ALAKAM MALLAPPA. **15 I C. 613.**

———*Plea of possession—Possessory title—Good against all but the true owner.*

In a suit for ejectment the plff.'s possessory title, in the absence of a better title proved by the deft. holds good against all the world, except the true owner. 26 M. 514; 29 A. 52; Perry *v.* Cissold, 1907, A.C 73, Ref. (*Sundara Iyer and Ayling*, JJ.) ADI NARAYANA IYER *v.* K. KRISHNAN. **(1912) M.W.N. 707=15 I.C. 97=12 M.L.T. 183.**

EJECTMENT—Proof of Title.

———*Plea of possession—Plaintiff or defendant title not proved—Defendant in possession.*

No suit can lie where it is found that neither plff. nor deft. had title and plff. was not in possession at the date of suit and for some years prior thereto, to give him a title by prescription. (*Sundara Aiyar and Phillips*, JJ.) VENKATACHELLA *v.* CHINNA GOUNDEN. **10 M.L.T. 432=12 I C 683=(1911) 2 M.W.N. 460.**

———*Plea of possession—Possession within 12 years—Proof of.*

In a suit for possession upon a dispossession, the plff. is bound to establish a subsisting title, (*i.e.*, within 12 years immediately preceding the commencement of the suit. 25 M L.J. 95 (P.C.). Foll. (*Drake Brockman*, J.C.) KEROJI KUNHI *v.* EKOJI KUNHI *v.* AKAJI KUNHI. **34 I C. 131.**

———*Plea of possession.*

Where in a suit for ejectment the title to the property is admittedly in a third party and the plff's. claim is based only on long possession, the plff. must prove that the deft. is a trespasser. (*Mullick*, J.) CENTRAL KAREND COAL COY., LTD. *v.* KARTIK RIWANI. **34 I C 616=1 P.L J. 47.**

———*Plea of possession—Payment of Govt. revenue.*

In a suit for possession by one trespasser on Government land against another, the one who has paid Government revenue on the land is preferred. Assessment to government revenue converts the trespasser's possession into a legal one. (*Maung Kin*, J.) TUM AUNG *v.* MA HTEE. **56 I C. 935=12 Bur. L.T. 263.**

Proof of Title.

———*Proof of title—Possession—Suit for—Registered conveyances for over fifty years.*

In a suit for possession the plff based his title on a grant from Govt. but he could not produce it. He however produced registered conveyances, mortgages and leases and other title-deeds. As none of these were impugned, it was held that a clear title to property was proved. (*Lord Moulton*). JOHN KING *v.* CHAIRMAN OF MUNICIPAL COMMISSIONERS OF HOWRAH. **18 C W N. 898=27 M.L J 20=26 I C. 949=20 C L.J. 407 (P.C.).**

———*Proof of title—Possessory suit.*

A suit based on title could not succeed on the ground of possessory title in case plaintiff failed to prove his real title. (*Gokul Prasad*, J.) WALI MUHAMMAD *v.* ANTOO KOERI. **1923 All. 117.**

———*Proof of title—Onus on plaintiff—Weakness of defendant's title.*

Where plff. sues to recover possession of land on declaration of his title, he must prove his title. If he fails to do so, the mere failure of

the defendant to establish his title does not help plaintiff. (*Greaves and Panton, JJ.*) ABDUL AZIZ *v.* AMIR ALI. **1923 Cal. 166.**

———*Proof of title.*

An ejectment suit brought by the purchasers at a revenue sale was resisted, as the defts. held the lands in dispute as holders of tenures from before the permanent settlement. Four deeds were relied upon; the latter two deeds covered portions of land and the right created was of a part—proprietor and not of a subordinate tenure holder. The two later deeds overlapped the earlier deeds covering the *mudafats* while the later deeds covered these and two more. The suit was declared for joint possession of a share of a disputed land. (*Jenkins, C.J. and Mookerjee, J.*) SARODA KUMAR ROY *v.* JAGABANDHU SAHA. **22 I.C. 247 = 18 C.L J. 332.**

———*Proof of title.*

The title existing on the date of the suit must be the basis for the plff.'s success. (*Chatterjee, J.*) CHATERDHARI LAL *v.* BIRANCHI LAL. **9 I.C. 248.**

———*Proof of title—Plaintiff to prove title.*

In a suit in ejectment or declaration and injunction, plaintiff can succeed only on the strength of his own title and not on the weakness of a defendant's title. (*Abdul Raoof and Harrison, JJ.*) MT. DURGA DEVI *v.* MT. SHIB DEVI. **4 Lah. L.J. 173 = 1922 Lah. 83.**

———*Proof of title—Title—Strict Proof—Heirship.*

A person claiming possession of the property of a deceased Mahomedan as a distant kindred must establish by evidence that all persons having a prior or better title than him have been exhausted, or do not exist. (*Mullick and Atkinson, JJ.*) SHEIKH MIRZA *v.* ABDUL GANI. **43 I.C. 338 = 4 P.L W. 130.**

Tenants.

———*Tenants—Proof of—Plea of tenancy not proved.*

In a suit for ejectment based on title a person alleged to be a tenant denied the plaintiff's title. At the trial the plaintiff proved his title but was unable to prove the tenancy alleged by him. *Held* that the plaintiff was nevertheless entitled to a decree for ejectment. (*Gokul Prasad, J.*) LACHMAN DAS *v.* MULCHAND. **1923 All. 411.**

———*Tenants—Failure to comply with terms of lease—Relief against forfeiture—T.P. Act. S. 114.*

In a suit for ejectment on the ground that the terms of the lease had not been acted upon, the defendant pleaded that the standard rent fixed had been paid duly to the Rent Controller and all terms of the lease complied with in terms of the standard rent. *Held*, the proper

rent was the one fixed by the Controller and as all terms of the lease had been complied with, though in terms of the standardieed rent, the lease was subsisting. Even if there was a forfeiture, it could be relieved against under S. 114, T. P. Act. The operation of the section, is not in any way affected by the provisions of the Rent Act. (*Greaves, J.*) AHINDRA NATH CHATTERJEE *v.* TWISS. **49 Cal. 150 = 1922 Cal. 394.**

———*Tenants—Suit by—Tenant-in-common.*

A tenant-in-common can sue in the Madras Presidency for his share only when the property is forfeited by the lessee. 38 M. 445, Fol. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) AHMED SAHIB *v.* MAGNESITE SYNDICATE, LTD. **32 I.C. 512 = 39 M. 1049.**

———*Tenants—Suit by landlord.*

A landlord can proceed in ejectment against one who has been recorded long as sole rent-paying tenant, in revenue records, regardless of any co-heirs' claim. (*Holms, S. M.*) TRIBUWAN DAT *v.* MUHAMMAD ABDUL HASAN KHAN. **33 I.C. 264 = 2 O.L J. 746.**

Trespassers.

———*Trespasser—Right of landlord to sue.*

It is open to a landlord, where his title is in jeopardy from the aggression of a neighbouring zemindar and where his title may be damaged by a denial of his rights over the land, to bring a suit for the purpose of being put into possession of the land as against them. 10 C. 1076, foll. (*Mookerjee and Chotzner, JJ.*) RAJ KUMAR MANDAL *v.* ALI MIA. **37 C.L.J. 94 = 1923 Cal. 192.**

———*Trespasser—Lessor's right.*

A trespasser in actual possession for twenty years of land let out on lease by the owner can be ejected unless he has taken a *bona fide* settlement from a third person, whom he believed in fact to be the landlord. (*Fletcher and Smither, JJ.*) HAJRA SARDARA *v.* KUNJA BEHARI NAG. **25 C.L.J. 635 = 40 I C. 271 = 21 C.W.N. 1001.**

———*Trespasser—Landlord and tenant—Suit for trespass.*

A tenant, in possession of land is the proper plff. to sue for trespass on it. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*) RAMCHANDRA SILL *v.* RAMANMANI DASI. **36 I.C. 890 = 20 C.W N. 773.**

———*Trespasser—Co-sharer landlords.*

The rule that all sharers (of the landlord right in the land) should unite in a suit to determine a lease is not applicable to a suit to eject a trespasser. 7 C. 414, Ref. (*Sanderson, C.J. and Mookerjee, J.*) DWARKANATH ROY *v.* MATHURA NATH ROY. **24 C.L.J. 40 = 34 I.C. 833 = 21 C.W.N. 117.**

EJECTMENT—Trespassers.

——*Trespasser—Suit for declaration of title and for possession—Title proved—Position of defendant.*

Where in a suit for a declaration of title and for recovery of possession from the deft. the title of the plff. is proved, the deft. must be deemed a trespasser in occupation of the land and is liable to be ejected at the instance of the plff. (*Mookerjee and Beachcroft*, JJ.) SHASHI BHUSHAN MANDAL *v.* RAM SEBAK MANDAL.
24 I.C. 181.

——*Trespasser—Raiyat inducted by trespasser—Rights of.*

A *raiyat* inducted by a trespasser in good faith has full rights and is an exception to the general rule that no one can confer a better title upon another than he himself has, but the exception will not extend where there is no good faith on the part of both. (*Carnduff*, J.) RAJENDRA NARAIN SAHA *v.* ASHUTOSH SANYAL.
18 I.C. 194.

——*Trespasser—Compensation—No duty to pay.*

Where a person trespasses on the land of another and spends considerable money in effecting improvements on that land, he is not entitled to compensation from the true owner when the latter seeks to eject him. (*Chevis and Harrison*, JJ.) WAZIRI MAL *v.* GANGA RAM.
69 I.C. 573.

——*Trespasser.*

Where the defts. acted on their own behalf only in suing a trespasser for possession their adverse possession begins from the date of their possession as against their co-sharers. (*Le-Rossignol*, J.) ZULPHI *v.* ASGHAR.
3 Lah. L.J. 441.

——*Trespasser—Person having possessory title can sue.*

A person having a possessory title to immoveable property or a transferee from such persons can maintain a suit to eject a trespasser. (*Schwabe*, C.J. *and Wallace*, J.) PARTHASARATHY AIYAR *v.* SUBBARAYA GRAMANY.
45 M L.J. 173=17 L.W. 763=(1923) M.W.N. 552=1924 Mad. 67.

——*Trespassers—Possessory title—Right to eject defendant—Joint possession.*

It is open to a plaintiff who was in possession but was dispossessed by the deft. to sue for recovery of possession on the strength of his possessory title. If the defendant shows an equal right or title with the plaintiff, the latter will be entitled to be put in joint possession with the former. If the plff. has a better right than the deft. the latter must surrender possession. 26 M. 514; (1921) M.W.N. 243, Rel. (*Kumaraswami Sastri and Devadoss*, JJ.) KAJI AMIR SAHIB *v.* KAJIR MAHOMED OLI AHMAD SAHIB.
15 L.W. 430=66 I.C. 237=(1922) M.W.N. 439.

EJECTMENT—Trespassers.

——*Trespasser—Suit by lessee—Title—Voidable transaction.*

A permanent lease of a trust property in excess of the trustee's powers is not void but only voidable and the lessee may use the lease for the ejectment of the trespasser from the land 40 Mad. 212; 36 Cal. 1003; and 40 M. 709, ref. (*Spencer and Seshagiri Iyer*, JJ.) KADIR MASTHAN ROWTHER *v.* SEGAMMAL.
43 Mad. 433=38 M.L.J. 198=(1920) M.W.N. 185=11 L.W. 197=55 I.C. 656=27 M.L.T. 286.

——*Trespasser—True owner—Right of.*

A true owner cannot at all times enter his own premises and use force and violence to eject a trespasser; such an act though not tortuous, may yet give rise to criminal liability, if attended with force or violence. (*Ayling and Oldfield*, JJ.) MARGAM AIYAR *v.* S. J. MERCER.
15 Cr. L.J. 225=23 I.C. 177=(1914) M.W.N. 124.

——*Trespasser—Right of landlord to sue in ejectment.*

It is open to a landlord to sue to eject a trespasser even though the tenancy subsists. 11 N. L.R. 124; 18 N.L.R. 82, referred. (*Batten*, J. C.) DEBURAM *v.* PAHLAD PRASAD.
1923 Nag. 79.

——*Trespasser—Right of landlord to sue.*

A landlord can bring a suit in respect of his tenancy against a trespasser. His right to sue in ejectment is not abandoned. (*Prideaux*, A.J.C.) ALLIBHAI *v.* SHAN RAO.
1922 Nag. 216.

——*Trespasser—Rent Court.*

A trespasser can be ejected through the rent Court. (*Holms*, S. M.) RAM LAL *v.* ABUL HASAN KHAN.
48 I.C. 543=5 O.L.J. 196.

——*Trespasser—Admission to tenancy.*

Receipt of rent, for periods subsequent to the death of a tenant, from a man who is not an heir but takes possession of the holding of the deceased tenant, amounts to his admission to tenancy, and a fresh statutory period begins from the time he takes possession of the holding. (*Holmes*, S. M. *and Campbell*, J. M.) JAGMOHAN UPADHYA *v.* KAMTA SRIROMAN PRASAD SINGH. **33 I.C. 247=2 O.L.J. 730.**

——*Trespasser—License suit by.*

An ejectment suit can be instituted by a licensee against a trespasser. (*Stuart*, J.C.) SITARAM *v.* JAGAN NATH.
17 I.C. 469=15 O.C. 317.

——*Trespasser liable to ejectment—By tenant in possession in spite of landlord's support.*

A mere trespasser, in spite of the landlord's support, is liable to ejectment by the tenant, against whom he cannot retain possession. (*Chamier*, C. J. *and Sharfuddin*, J). KARTIC REWANI *v.* THE CENTRAL KARKEND COAL CO., LTD.
37 I.C. 1004=1 P.L.J. 420.

EJECTMENT—Miscellaneous.

——*Trespasser—Right to sue—Person entitled to possession.*

The owner, or person in possession alone can sue for trespass; the beneficiary of a public charity, cannot sue without joining the trustees as parties. (*Young*, J.) COWASJI *v.* BELLA. **50 I C. 509=11 Bur. L.T. 249.**

Miscellaneous.

——*Suit by heir of person in possession.*

A heir of a person in possession is entitled to bring a suit for possession against one who has no better title. (*Chamier*, J.) SROHAN SINGH *v.* AHSANI BEGAM. **17 I C. 469=10 A.L.J. 518.**

——*Suit—Burden of proof—Title of plaintiff.*

In an ejectment suit, the plff. can succeed only on the strength of his own title. He cannot be allowed to abandon his own case and adopt that of the deft. and on that footing claim relief. (*Batchelor and Roe*, JJ.) BALMUKUND KESARDAS *v.* BHAGWANDAS KESARDAS. **19 I.C. 401=16 Bom. L.R. 209.**

——*Nature of tenancy—Duty of Court.*

In an ejectment suit, the Court must come to a finding as to the nature of tenancy and also whether the tenancy so found has been put an end to, on the date of suit. (*Sadasiva Aiyar and Napier*, JJ.) ITTINAN *v.* GOVINDAN NAMBUDRI. **62 I.C. 390=13 L.W. 397.**

EJUSDEM GENERIS.

☞ *See* INTERPRETATION OF STATUES.

ELECTION.

See also (1) SUCCESSION ACT, Ss. 167—177.
(2) T. P. ACT, S. 35.
(3) WILL.

——*Petitions need not be verified—Who can challenge.*

An election petition need not be verified as in the case of plaints unless the particular Act under which the petition is put in specifically requires it. It is only a person who has actually contested an election and who claims to have been validly elected or a body of electors who can challenge the validity of an election. (*Mears*, C.J. *and Piggott*, J.) SURAJ NARAIN *v* JANG BAHADUR.
45 A. 687=1924 All. 132.

——*Intentional misdescription in or removal of voter's name from, voter's list.*

The Municipal Board itself is liable for intentional misdescription of name of duly qualified person from list of candidates or for malicious removal of name from the list. (*Walsh and Stuart*, JJ.) MUNICIPAL BOARD, AGRA *v.* ASHARAFI LAL.
44 A. 202=20 A.L.J. 1=1922 All. 1 (2).

ELECTION.

——*Temple committee—Meeting—Notice of—Want of quorum—Adjourned meeting.*

With very limited exceptions where a special meeting of a committee or any other body has to be specially convened for a particular purpose every member of that body ought to have notice of and a summons to the meeting. The election, being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance, as for instance, abroad—there could not be a good electrol assembly. A meeting of a temple committee for the election of trustees for a temple was adjourned for want of quorum and no notice of the adjourned meeting was given to the other members of the committee. On the adjourned date the election was held. *Held*, that the election was invalid for want of notice of the meeting to the members of the committee. (*Marten and Fawcett*, JJ.) NILKANTH DEVRAO *v* MURARI GOVIND.
25 Bom. L R. 315=1923 Bom. 272.

——*Temple trustees—English law non-applicability—Voters' lists.*

The common law of England relating to Parliamentary elections should not be applied to regulate the election of temple trustees in India, though the principles which underlie that law may be invoked if they appear to the Court to be in conformity with the rules of justice, equity and good conscience. The fact that persons whose names were not in the list of voters participated in the election did not invalidate the election in the absence of anything to show that the right depended on an entry in the voters' list. (*Mookerjee and Chotsner*, JJ.) RAGHUNATH SARMA *v.* JIBAN CHANDRA SARMA. **27 C.W.N. 312=30 Cal. 202=1923 Cal. 467.**

——*Number of votes recorded exceeding maximum—Election void.*

The rule that when the number of votes recorded exceeds the maximum that can be given at an election must be void, is perfectly sound, especially when there are no rules to meet such a contingency. Where the voting paper is void on the face of it, no evidence should be allowed to vary the recorded voting paper. (*Sanderson*, C. J. *and John Woodroffe and Mukerji*, JJ.) NAGENDRANATH *v.* J. VAS. **60 I.C. 547=32 C.L J. 124.**

——*Validity of—Infringement of rules.*

Where rules have been framed for the conduct of elections, they may be either mandatory or directory. An infringement of the former class of rules avoids the election. Where an infringement of a directory rule is proved, the burden rests upon those who maintain the validity of an election notwithstanding the infraction of the rule, to show that the result

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was not affected by the infringement. A provision as to the time of opening and closing the polls is considered directory. (*Mookerjee and Panton*, JJ.) SHYAM CHAND *v.* DACCA MUNICIPALITY. **30 C.L.J. 270=53 I.C. 741=24 C.W.N. 189.**

———*Supreme Council—Voting by members of local council before taking oath of allegiance —Effect.*

The omission, by a member of a local council, to take the oath of allegiance does not make him incompetent to vote for the election of members to the Imperial Legislative Council. (*Fletcher*, J.) BHUPENDRA NATH BASU. *v.* RANAJI SINGH. **20 I.C. 676=41 Cal. 384.**

———*Election agent, can be proposer—Punjab Government Notification No. 9 of 31—7—1920, Regulations 7 and 11—Punjab Electoral Rules, Rr. 5 (4), 31, 34 (2) (a) and 42 (1) (c)—Amendment of petition—Nomination paper delivered before day fixed is not invalid.*

The election agent of a candidate can be his proposer or seconder and *vice versa*. The Election Commissioners can allow further or better particulars to be furnished subsequent to the petition provided no new substantive charge is introduced and that the respondent is not taken by surprise. Where the returned candidate is declared duly elected on a single nomination paper and the validity of the election is questioned on the ground that it was delivered to the Returning Officer before the time fixed, the Commissioners have power to decide the point irrespective of the fact whether the point was raised before the Returning Officer, Regn. 7 of Punjab Notification, No. 9, dated 31—7—1920 is ambiguous but as it is a disabling provision it must not be strictly construed against the nominee. The Regulation does not mean that a nomination paper delivered to the Returning Officer *before* the day fixed is invalid when the question of the falsity of the return of expenses comes before the Commissioners, they have power to decide the same. (*Kennaway, Abdul Quadir and Dalip Singh, Coms.*) AMIN KHAN *v.* SIKANDAR HAYAT **61 I.C. 744.**

———*Corrupt practice — Particulars—Amendment of Petition—Candidate and Agent —Punjab Electoral Rules, R. 31.*

An election petition alleging corrupt practices on the part of the candidate cannot be summarily rejected for want of fuller particulars. An opportunity should be allowed for further and better particulars to be given. The object of furnishing such particulars is to avoid surprise to the respondent and from that point of view they are necessary in the interests of justice. A candidate is responsible for the acts of those who, to his knowledge, for the purpose of promoting his elections, canvass for him. (*Kennaway, Abdul Quadir, Dalip Singh, Coms.*) DAURAN KHAN *v.* MUHABBAT KHAN. **61 I.C. 337.**

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———*Candidate and agent—Punjab Electoral Rules, R. 42 (1) (b).*

The relationship of candidate and agent is much wider than that of principal and agent and such relationship is to be inferred from facts. Where several voters were fed on the polling day by persons intimately connected with a candidate and acting on his behalf, the inference is clear that they are fed to induce them to vote for the candidate. (*Kennaway, Abdul Qadir and Dalip Singh*, J. Cs.) RAJMAL *v.* LAJPAT RAI. **61 I.C. 333.**

———*Form of petition—Amendment—Corrupt practice particulars to be given.*

The particulars of any corrupt practice alleged must be given in the election petition. The English Law in this respect has not been followed. The rules in India do not prescribe any form in which an election petition is to be drafted and a d alt in the form given at page 415 of Halsbury's Laws of England, Vol. XII, or in the form given for a plaint in the C.P. Code, Election Commissioners can allow amendment of an election petition where it is sought to bring home a currupt practice to any one it is the action of that person which must be primarily looked to. A spiritual leader can canvass for a candidate provided he holds out no threat or inducement. Indian courts should administer the Indian Election Law and not the English Common Law. (*Kennaway, Abdul Quadir, and Dalip Singh, Coms.*) BARKAT ALI *v.* MUHARRAM ALI. **61 I.C. 337.**

———*Bribery and Personation—Irregularities—Electing officer empowered to decide objection — Decision, questioned in a Civil Court.*

At an election of a temple trustee, the agent of the successful candidate abetted the false personation of a dead voter. There was no proof that the candidate authorised or ratified the agent's act but the inclusion of his vote did not affect the result of the election: *Held*, that the false personation did not invalidate the election, though the vote included ought to be rejected. (Per *Sadasiva Aiyar*, J.) The Common Law of England relating to Parliamentary elections cannot govern the election of a temple trustee. The fact that certain voters were carried to the voting booth at the expense of a candidate does not vitiate the election. (Per *Napier*, J.) Personation by itself does not invalidate the election. The number of votes given by personation should be struck off. An election is not void because the agent of a candidate had been guilty of one or two cases of bribery. (Per *Sadasiva Aiyar*, J., *Napier* J, *contra*) Where the electing officers were given the power to decide the objections as to personation and to allow or to disallow the votes at their discretion. *Held*, that the decision given by the electing officers honestly on the objections raised cannot be questioned by any proceedings in Court. (*Sadasiva Aiyar and Napier*, JJ.) RAMANJULU *v.* PARTHASARATHY. **17 M.L.T. 331=28 I.C. 612=(1915) M.W.N. 290=2 L.W. 383.**

ELECTION OF REMEDIES.

———*Conversion — Creditor's petition in insolvency based on—Effect of adjudication—Maintainability of suit to recover article pledged.*

A person who had lent a ring to another presented an insolvency petition to have that other adjudged insolvent, and proved in insolvency a debt based on the value of the ring. The ring had been pledged to a third party a few days after the petition was put in. The plaintiff failed to get anything for his debt in the insolvency proceedings, and then brought a suit against the pledgee for return of of the ring or its value. *Held*, in treating the value of the ring as a liquidated debt for purposes of the insolvency proceedings, plff. had already elected to abandon all rights to the ring and as such the action cannot lie. Moreover the pledgee had obtained a good title on the principle of estoppel feeding the title. (*Schwabe*, C.J., *Oldfield and Ramesam*, JJ.) SINNAN CHETTY *v.* ALAGIRI AIYAR.

45 M.L.J. 516=46 Mad. 852=18 L.W. 545=(1924) M.W N. 6 (F.B.)

ELECTRICITY ACT (IX OF 1910).

———**Ss. 14 and 19**—*Operator—Damages—Damage caused by another company.*

An operator cannot claim damages for acts of his own or done on his behalf and at his expense by the owner. Where a gas company was cut off from reasonable access to its own property by acts done in the exercise of its powers by the Electric Supply Company and those acts caused damage, detriment and inconvenience, *held*, that the damage claimed to have been suffered could be compensated under S. 19 that S. 14 did not apply and the gas company could not be deprived of its remedies. (*Darvar and Beaman*, JJ.) BOMBAY GAS COMPANY *v.* BOMBAY ELECTRIC SUPPLY AND TRAMWAY COMPANY. **16 Bom, L R, 964=26 I.C. 892=39 Bom. 124.**

———**S. 24, Sch, Cl. VI (1910).**

A fuse or cut out is necessary in service line and is kept under the licensee's seal. The license must bear the charge of the service line whether the consumer has paid the initial expenditure or not. The licensee can discontinue the supply of energy if the consumer's installation is defective. In case of any alleged defect, the licensee can refer the matter to an electric inspector and he is to decide the matter. If energy is supplied to the consumer knowing that the installation is defective, the consumer will not pay for a new fuse or cut out if the old melts on account of defective installation. (*Scott-Smith* J.) THE LAHORE ELECTRIC SUPPLY CO. *v.* DURGA DAS.

79 P.W.R. 1918=85 P R. 1918=43 I.C. 171=77 P.L.R, 1918.

———**S. 39**—*Theft of electricity—Avoiding metre.*

The use of the word 'mains' for the words "any electric supply-line through which energy is supplied by the licensees" in S. 39 in a notice issued by the Municipal Engineer to a person accused of theft of energy under S. 39, would operate as an admission against the Municipality and would be a good defence to a criminal charge under S. 379, I.P.C. for theft. Where the word "mains" is qualified by such words as "outside, your metre" the accused gets full notice that he must not take current except through the metre. The word "dishonesty" is a legal expression having the same sense as that in which it is used in the Penal Code. (*Holmwood and Chapman*, JJ.) CARL FORSTMAN *v.* H. T. S. FORREST.

27 I.C. 591.

ENCUMBRANCE.

———**Sch. Cl. 6 (2) (c)**—*Seals of cut out not in good order—Discontinuance of electric supply.*

It was found as a fact that a part of the electric apparatus on the appellant's premises, namely the seals of the cut-out were not in good order and condition. As a result of this defect there had been a leakage of energy, whether by theft of the current or otherwise. *Held*, that such a state of things must certainly be deemed to be likely to affect injuriously the use of energy by the licensee or by other persons," and accordingly, the Electric Supply Company were entitled, upon discovering this condition of things to discontinue the electric supply. (*Scott Smith and Fforde*, JJ.) KARORI MAL *v.* THE E. T. AND LIGHTING CO. LTD.

4 Lah. 182=1924 Lah. 142.

EMBLEMENTS.

See T. P. ACT, S. 108.

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).

———*Power of Governor-General in Council.*

The Governor General in Council is not precluded by S. 23 of the Indian Councils Act, 1861 from passing an Act like the Emergency Legislation Continuance Act (I of 1915) embodying provisions of Ordinance 3 and 5 of 1914. The High Court has no jurisdiction to question orders made under the above Act. (*Chaudhuri J.*) *In re* JEWA NATHOO. **44 Cal. 459=20 C.W.N. 1327=37 I.C. 48=18 Cr. L.J. 64.**

ENCROACHMENT.

See (1) ADVERSE POSSESSION.
(2) ACQUIESCENCE.
(3) LANDLORD AND TENANT.

ENDORSE.

See NEG. INST. ACT.

ENCUMBRANCE.

See (1) BENGAL PATNI REGULATION.
(2) B.T. ACT, S. 159.
(3) MAD. EST. LAND ACT.

ENCUMBRANCE.

———Execution sale subject to.

See (1) C. P. CODE, O. 21. Rr. 62, 66.
(2) EVIDENCE ACT, S. 115.

ENFRANCHISEMENT.

See GRANT-INAM.

ENGLISH BANKRUPTCY ACT (1883).

———46 and 47 Vict., C. 52, S. 118—*Letter of request—Jurisdiction—Indian Courts.*

To invest an Indian Court with the jurisdiction under S. 118, to act in aid, and be auxiliary to the High Court in England, a request from the English Court asking the Indian Court to act in aid, is necessary. Such letter of request must be sent to the other Court. The order of the English Court presented by the Trustee in Bankruptcy is not sufficient to give jurisdiction to the Indian Court. (*Harrington*, J.) *In re*, KING AND CO.. **12 I.C. 14 = 38 Cal. 542.**

ENGLISH EXTRADITION ACT.

———*Records of German Courts—Evidence Act, if exhaustive.*

Per *Woodroffe*, *J.*—The Evidence Act is not exhaustive. Therefore the records of the German Court authenticated in the manner prescribed by Ss. 14 and 15 of the Act, are admissible in evidence. (*Woodroffe*, *Mookerjee and Chitty*, JJ.) *In re*, RUDOLPH STALLMAN. **39 Cal. 164 = 15 C.W.N. 1083 = 14 C L J. 375 = 12 I.C. 273 = 12 Cr.L.J. 505.**

ENGLISH LAW.

See also PRATICE-PRECEDENTS.

———*Applicability of—Landlord and Tenant—English Law—Adoption of.*

In the case of an alleged forfeiture by denial of the landlord's title, where the case is not governed by S. 111 of the T.P. Act, the English law is applicable as a rule of justice, equity and good conscience. (*Lord Phillimore*). MAHARAJA OF JEYPORE *v.* RUKMINI PATTAMAHADEVI. **42 Mad. 589 = 36 M.L.J. 543 = 7 A L.J. 552 = 29 C L.J. 528 = 21 Bom. L.R 655 = (1919) M.W.N 271 = 23 C.W N. 889 = 26 M L.T. 16 = 50 I.C. 631 = 10 L.W. 381 (P.C.).**

———*Analogies from—Applicability of.*

The analogies from the English Law are not applicable if the language of the Indian Statute is clear. Assignment by way of charge of a chose in action must be in writing. (*Lord Moulton*). MULRAJ KHATAN *v.* VISHWANATH. **37 B. 198 = 40 I.A. 24 = (1912) M W.N. 1247 = 12 M.L.T. 652 = 11 A L.J. 7 = 24 M L J. 60 = 17 C.W.N. 209 = 15 Bom. L.R. 9 = 17 I.C. 627 = 17 C.L.J. 162 (P.C.).**

ENGLISH RULES OF CONSTRUCTION.

See DEEDS—CONSTRUCTION.

EQUITY.

ENHANCEMENT—Of Rent.

See (1) B. T. ACT, Ss. 50—52.
(2) LANDLORD AND TENANT.
(3) MADRAS EST. LAND ACT, S. 26.

EPIDEMIC DISEASES ACT (III of 1897).

———S. 3—*Powers of local Govt.—Delegation.*

Under S. 3 the prosecution has not to prove that the accused's disobedience was likely to cause damage and where the accused plead not guilty, the prosecution has to prove the legality of the order. Under the Act, the Local Government can give power to take measures but it cannot empower them to delegate those powers to others and hence the Collector has no power to delegate his own power. The power to take measures under the Act which may be granted by the local Govt to any person is different from the orders or regulations which have to be observed by the public in respect of these measures. Rule 104 of the regulations under the Act is *ultra vires*, of the local Government. (*Sadasiva Aiyar*, J.) NAGAPPA *v.* EMPEROR. **38 Mad 602 = 21 I.C. 668 = (1913) M.W.N. 928.**

EQUITABLE ASSIGNMENT.

See (1) ASSIGNMENT.
(2) T. P. ACT, Ss. 130—137.

EQUITABLE ESTATE.

See TRUSTS ACT.

EQUITABLE MORTGAGE.

See TRANSFER OF PROPERTY ACT, S. 59.

EQUITABLE SET OFF.

See C. P. CODE, O. 8, R. 6.

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———*Creditor making fraudulent admission to defeat creditors cannot seek the aid of the law.*

A creditor who as a result of a fraudulent conspiracy makes a fraudulent admission of payment in order to defeat other creditors is not entitled to seek the aid of the law in attempting to recover the amount in respect of which he made the admission. (*Ryves and Stuart*, JJ.) MUHAMMAD SHAFI *v.* NANHE. **63 I C. 921 = 19 A L.J. 45.**

———*Voidable transaction.*

A person avoiding a voidable transaction must return the benefit derived thereunder. (*Mookerjee and Carnduff*, JJ.) CHARU CHANDRA PALL *v.* KALIDASS. **10 I.C. 269 = 13 C.L.J. 447.**

———*Courts in India.*

It is only where no definite law is laid down for guidance, that courts in India should decide

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according to justice, equity and good conscience. Equity follows the law, means that it is governed by rules of law as to the legal estates and acts in analogy with legal rules in regard to equitable estates when an analogy exists. It can never be used to defeat a law. (*Drake-Brockman*, J.C., *Stanyon and Mitra*, A.J.Cs.) SALU BAI *v.* BJAT KHAN.
42 I.C. 200=13 N.L.R. 130 (F.B.).

———*Grantor derogating from his grant—Applicability to B.T. Act.*

The equitable principle that a person cannot derogate from his own grant does not apply to the case of a surrender by a *raiyat* after he has sold a portion of the non-transferable holding to another. The B.T. Act governing the case restricts powers of surrender only to certain specified instances. The equities are all in favour of the landlord, because the transfer from the *Raiyat* must have known the precarious title he was purchasing. (*Miller*, C.J., *Mullick*, *Jwala Prasad*, *Foster and Macpherson*, JJ.) MT SHEORAJI KUER *v* DHANI MIAN. **4 P.L.T. 531=1 P.L.R. 402=3 P. 1=1923 Pat. 305=1924 P. 1 (F.B.).**

———*Principles of—Absence of statutory provisions—English rules.*

Where no specific statutory directions are given, judges are bound to act according to justice, equity and good conscience and there is a large preponderance of judicial opinion in favour of the view that the principles applicable in such circumstances should be identical with the corresponding relevant rules of the common law of England. 24 C.W.N. 992 Ref. to (*Das and Adami*, JJ.) JAGAT MOHAN NATH SAHI DEO *v.* KALIPADA GHOSH. **1 Pat. 371=(1922) Pat. 85=3 Pat. L.T. 276=66 I.C. 861=1922 P. 104.**

EQUITY OF REDEMPTION.

See T.P. ACT, SS. 60 AND 91.

ESCHEAT.

See (1) LANDLORD AND TENANT.
(2) CROWN.

ESTATES PARTITION ACT (V. (B.C.) OF 1897).

See under BENGAL ESTATES PARTITION ACT.

ESTOPPEL.

See (1) EVIDENCE ACT, Ss. 115, 116.
(2) T. P. ACT, Ss. 43, 54.
(3) PART-PERFORMANCE.

———*Execution—Objection—Declaration of judgment debtor's interest—Jurisdiction to sell—Bundelkhand Land Alienation Act.*

The decree-holder having sufferred resistance in execution, obtained a declaratory decree that the property belonged to the judgment-debtor.

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The latter then objected that it could not be sold under the Bundelkhand Land Alienation Act. *Held*, he was not estopped from raising it. (*Sulaiman*, J.) SATDHAR *v.* RAM CHANDRA.
21 A.L.J. 917=L.R. 4 All. 607 (Civ.)=46 All. 153=1924 All. 261.

———*Landlord and tenant—Standing by—What amounts to—Execution of buildings.*

In order that a tenant may avail himself of a plea of acquiescence or estoppel against his landlord, he must show that in erecting buildings of a permanent nature, he acted in the *bona fide* belief he had a permanent right to the land and that the landlord knowing he was acting in that belief stood by and allowed him to be in possession. (*Ghose and Panton*, JJ.) SYED ALI KAZEMINI *v.* MANIK CHANDRA PRAMANIK. **27 C.W.N. 969=1924 Cal. 156.**

———*Criminal trial — Non-payment of license-fee of Municipality—Failure to appeal to Standing Committee—Effect.*

Failure to appeal to standing committee in non-payment of license-fee of Municipality works as estoppel. (*Krishnan*, J.) *In re.* A. E. SMITH, **45 M.L.J 731=1924 Mad. 389.**

———*Nature of—When not allowed.*

Estoppel is an equitable relief and where it is operated by cheating another of his rightful claims, it will not be effective to help to him to deprive another of his rights. (*Ayling and Odgers*, JJ.) KUMANU KOTAYYA *v.* PEDDI VEERAYYA. **(1923) M.W.N. 679=1924 Mad. 177.**

———*Party to fraud or wrong doing—Debarred from setting up his own wrong.*

Party to fraud or wrong doing is debarred from setting up his own wrong. (*Schwabe*, C.J. *and Coutts-Trotter*, J.) PARTHASARATHY REDDY *v.* KANDASAWMI REDDY.
32 M.L.T. 349 (H.C.)=1923 M. 711.

———*Feeding of title—Doctrine of.*

Doctrine of estoppel applies to feeding of title. (*Schwabe*, C.J., *Olafield and Ramesam*, JJ.) SIMAN CHETTY *v.* ALAGIRI AIYAR.
45 M.L.J. 566.

EVICTION.

See EJECTMENT.

EVIDENCE.

ADMISSIBILITY.
APPRECIATION OF.
CIRCUMSTANTIAL EVIDENCE.
CO-DEFENDANTS.
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DOCUMENTS.
DUTY OF COURT.

EVIDENCE—Admissibility.

EXCLUSION OF.
HANDWRITING.
HEARSAY.
HOROSCOPE.
OPINIONS.
PEDIGREE.
PERSONAL KNOWLEDGE.
PHOTOGRAPH.
RECEIPT, VALUE OF.
RECITALS.
SHIPPING.
SUSPICION.
THUMB IMPRESSION.
TRIAL.
VALUE OF.

See also (1) C. P. CODE, O. 18.
(2) EVIDENCE ACT.

Admissibility.

——*Admissibility—Effect of—Evidence in the whole case.*

Evidence properly admitted for one purpose must be admissible for all purposes in the cause. (*Lord Macnaghten.*) BANK OF BOMBAY *v.* NAND LAL. **37 Bom. 122=40 I.A. 1=12 M.L.T. 646=(1913) M.W.N. 29=15 Bom L.R. 1=24 M.L.J. 176=17 C.L.J. 146=17 I C. 663=17 C.W.N. 358. (P.C.)**
[O.A. from 12 Bom. L.R. 316=5 I.C. 457]
See also 11 Bom. L.R 926=4 I.C. 652.]

——*Admissibility—Redemption suit—Validity of mortgage-deed—Previous pre-emption suit—Judgment—How far—Conclusive.*

Judgment in a previous pre-emption suit wherein the mortgage-deed, the mortgage in which was sought to be redeemed, was found to be sham and fictitious, is admissible in the redemption suit but not conclusive. (*Lindsay and Kanhaiya Lal, JJ.*) CHHIDDU *v.* SESRAJ. **21 A.L.J. 793=1924 All. 294.**

——*Admissibility — Report of chemical examiner—Not tendered in the trial Court—Appellate Court sending for it and not recording grounds under S. 428, Cr. P.C.*

Where the report of a chemical examiner was not tendered in the trial and the appellate Court sent for it and perused it without recording reasons as under S. 428, Cr. P.C., *held* the procedure was wrong. (*Sulaiman, J.*) WALI MUHAMMAD *v.* EMPEROR. **21 A.L.J. 869=9 O. & A.L.R. 994=1924 All. 193.**

——*Admissibility—Omission to object—Irrelevant evidence.*

Omission to object to the reception of evidence does not make irrelevant evidence relevant and the objection can be taken on second appeal. (*Macleod, C. J. and Heaton, J.*) NARHARI *v.* AMBABAI BALAKRISHNA. **44 Bom. 192=55 I.C. 316=22 Bom. L.R. 57.**

——*Admissibility — Objection to—Document not proved—Admission without objection—Effect of.*

EVIDENCE—Admissibility.

A document can be treated as duly admitted where its admission in evidence without being proved is not objected to by the party affected by it. (*Scott, C. J. and Chandavarkar, J.*) SHRINIVAS *v.* BALWANT VENKATESH. **37 Bom. 518=20 I.C. 162=16 Bom. L.R. 533.**

——*Admissibility — Judgment of probate Court, prior deposition of witness.*

A judgment of the probate Court cannot be admitted in evidence in a proceeding under S.193 of the Indian Penal Code for perjury committed in the testamentary suit. Former statement of witness can be used in certain circumstances to contradict or corroborate them but it is evidence upon which much reliance cannot be placed. (*Ghose and Cuming, JJ.*) OATES *v.* EMPEROR. **38 C.L.J. 163=25 Cr. L.J. 177=1924 Cal. 104.**

——*Admissibility—Proceedings inter partes—Order of settlement authorities if admissible in evidence.*

An order of the settlement authorities which has been pronounced in proceedings which are *inter partes* can be received in evidence. It is not conclusive but a presumption attaches to the order finally published under the Bengal Tenancy Act. (*Mookerjee and Cholzner, JJ.*) BHAIRAL CHANDRA DUTTA *v.* KALI KUMAR DUTT. **37 C.L.J. 491=1923 Cal. 606.**

——*Admissibility—Batwara papers—Writs of attachment—Weight—Distinction between—Absence of entry in a document—Relevancy of.*

Writs of attachment issued in 1792 and 1797 and prepared when the Collector took possession of a Zamindari for non-payment of revenue and Batwara papers are admissible in evidence to show the non-existence of tenures. The absence of entry in a document in which one would expect an entry is relevant, though the weight due to such fact is one to be determined in the light of the general evidence in the case. 45 C. 878, Rel. The question whether a document is admissible in evidence as a public document is distinct from the question whether the contents are binding on persons not parties to it. (*Mookerjee and Cholzner, JJ.*) TARA KUMAR GHOSE *v.* KUMAR ARUN CHANDRA. **1923 Cal. 261.**

——*Admissibility—Power of Court to refer to documentary evidence not exhibited—Opportunity to parties.*

No Court has a right to look at any document or any papers other than those on the record unless he gives to the parties to the suit an opportunity of being heard and making their submissions with regard to what is contained in documents outside the record to which the Judge desires to refer. (*Greaves and Panton, JJ.*) ALTAP ALI CHOUDHURY *v.* SRIMATI JARINA BIBI. **1923 Cal. 194.**

——*Admissibility—Objection to—Ground of objection not raised in the court below—Effect of.*

Where a piece of evidence not proved in the proper manner has been admitted without

objection the opposite party cannot challenge it at a later stage. But the principle on which unobjected evidence, is admitted, does not apply where evidence has been received without objection in direct contravention of an imperative provision of law. 8 C.W. 101, Ref. (*Suhrawardy and Cuming*, JJ.) SUDHANYA KUMAR SINGH *v.* GOWR CHANDRA PAL.
35 C.L.J. 473=27 C.W.N. 134=1922 Cal. 160.

———*Admissibility—Hand sketches.*

Hand sketches, drawn up by the parties on the basis of information derivable from quinquennial papers and Hakikat Chanhaddi papers are reliable evidence (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA *v.* WAZED ALI. **66 I.C. 866=34 C.L.J. 141.**

——*Admissibility—Objection to mode of proof.*

An objection as to the mode of proof not taken in the Courts below cannot be taken for the first time in second appeal. (*Chatterjea and Pearson*, JJ.) ALI MAHOMMAD KHAN *v.* MAHA RAJ BEPARI. **64 I.C. 266=36 C.L.J. 186.**

———*Admissibility—Document not inter partes.*

Documents between strangers to suit containing reference to the lands in suit as the boundaries of lands dealt with in those documents are not admissible as evidence in the suit. (*Chatterjea and Suhrawardy*, JJ.) SARAJ KUMAR ACHERJI *v.* UMED ALI.
25 C.W.N. 1022=63 I.C. 954=35 C.L.J. 19.

———*Admissibility—Objection to, not raised—Effect—Batwara maps and Chittas.*

Where *Batwara* maps and chittas prepared under the Bengal Estates Partition Act, though not admissible in evidence under S. 35 of the Act were admitted in the trial court without objection, no objection can be raised in second appeal as to their admissibility. (*Teunon and Newbould*, JJ.) MATIWOR RASUK *v.* DHANU MOLLA. **69 I.C. 963.**

———*Admissibility — Objection to—When taken—Appeal.*

An erroneous omission to object to evidence which is irrelevant and consequently inadmissible under any circumstances, does not make it admissible. But the Court will not entertain for the first time in appeal an objection that a document which *per se* is not admissible in evidence has been improperly admitted in evidence. (*Mookerjea and Beachcroft*, JJ.) ANBARTHI *v.* LUTFEATE. **46 Cal. 159=21 C.W.N. 996=41 I.C. 116=25 C.L.J. 619.**

———*Admissibility — Objection — Not raised, not permitted in appeal.*

Documentary evidence relevant to the case and admitted without objection in the first Court cannot be objected to in appeal on the ground that it is not admissible for the purposes

for which it has been used. (*Woodroffe and Mookerjee*, JJ.) PRASANNA DEB RAIKAT *v.* MAHANANDA DAS. **40 I.C. 553.**

———*Admissibility—Objection.*

Evidence which is irrelevant under any circumstances whatsoever must be distinguished from evidence which is admissible if certain conditions were fulfilled. (1 C.W.N. 830=19 A. 76 Ref.) In the latter case objection should be taken at the earliest possible stage before the court of first instance and if such objection is not taken the appellate court will not entertain it. (*Mookerjee and Carnduff*, JJ.) BASIR GAZI *v.* GRIJI NATH. **9 I.C. 211=13 C.L.J. 18.**

———*Admissibility—Consent of parties.*

Statements which are not admissible in evidence cannot be rendered admissible by consent of parties. (*Martineau and Zafar Ali*, JJ.) SUNDER SINGH *v.* SHAM SINGH. **1923 Lah. 630.**

———*Admissibility—Account books—Items entered by Munim before whom money was not paid.*

The noting of the items in an account book kept regularly by *Munim* in whose presence the money was not paid is no evidence. (*Martineau*, J.) FIRM OF GOKUL MAL RAM CHAND *v.* FIRM OF NATHMAL. **1923 Lah 431 (1).**

———*Admissibility, evidence of.*

Where the objection as to inadmissibility of the deed was taken in the first court in the written statement but was afterwards dropped and was not put in issue and it was not taken in the grounds of appeal to the lower appellate court. *Held*, no reason for remanding the case for an enquiry into the actual value of the property covered by the deed, was clearly made out. (*Broadway and Campbell*, JJ.) BASESHAR NATH *v.* MEHR CHAND. **1923 Lah. 21.**

——*Admissibility — Appeal — Document admitted without objection effect of—First Court.*

It is too late in appeal to object to the admissibility in evidence of a document which had been admitted without objection in the First Court. (*Broadway and Martineau*, JJ.) RAM CHAND *v.* BANK OF UPPER INDIA LTD. DELHI. **3 L. 69=24 P.W.R. 1922=5 L.L.J. 558=1922 L. 281.**

——*Admissibility — Theft — Police file and thanedar's statement.*

In order to prove an alleged theft of an account book in a Civil Court from the plaintiff's house the police file and a Copy of the statement made by the Thanedar in other case are inadmissible. (*Wilberforce*, J.) BARU *v.* SUKHA SINGH. **69 I.C. 1008=4 L.L.J. 418.**

———*Admissibility—Entries in Purohits books.*

Entries in the books of a purohit as to the relationship of the pilgrims are admissible in evidence. (*Broadway and Moti Sagar*, JJ.) PARTAP SINGH *v.* KIRPA SINGH.
30 P.L.R. 1922.

EVIDENCE—Admissibility.

———*Admissibility—No objection taken in the Court of first instance—If can be raised for the first time in appeal.*

Evidence admitted by the trial Court should not be excluded by the appellate Court if no objection has been raised by the opposite party at the time of its admission in the Trial Court. (*Abdul Raoof and Abdul Quadir*, JJ.) CHANNI BIBI *v.* AHMAD KHAN. **69 I.C. 331.**

———*Admissibility — Duty of Judge to decide.*

When at a trial, admissibility of evidence is objected to, it is the duty of the trial judge to decide at once whether it is admissible. If he holds it inadmissible the document should not find a place on the record and assessors or jurors should be warned not to rely on it. (*Chevis and Jones*, JJ.) KAPUR SINGH *v.* EMPEROR. **20 Cr. L J. 305 = 50 I.C. 481 = 98 P.L.R. 1918.**

———*Admissibility—Objection to—When to be taken.*

Where the trial Court had ordered a commissioner to inspect and report on books in the presence of the parties and their Counsel, which was done and the Counsel of one party after inspection furnished the Commissioner with a set of questions none of which suggested that the books were irregular, or unreliable. *Held* that the books must be taken to have been adequately proved. (*Chevis and Le-Rossignal*, JJ.) INDRA NARAIN *v.* NANAK CHAND. **58 P.R. 1917 = 58 P.R. 1916 = 32 I.C. 454 = 74 P W.R. 1916.**

———*Admissibility—Objection to.*

A party who did not object to the admissibility of secondary evidence of a registered will even in his appeal memo cannot be allowed to urge it. (*Scott-Smith and Shadi Lal*, J.) HARDEO RAM *v.* PARBATI. **31 I.C. 600 = 184 P.W.R. 1915.**

———*Admissibility—Entry in the account book of co-accused.*

In the case of several accused persons, an entry in the account book of one that he paid rent on behalf of another, is no evidence against that other (*Krishnan*, J.) *In re* SAMACHARI. **45 M.L.J 728 = 18 L.W. 743 = 33 M.L.T. 182 (H.C.) = 1924 Mad. 350.**

———*Admissibility—Objections to—Consent of parties—Waiver.*

Parties if so minded may ordinarily agree that evidence shall be taken in a particular way. That is not a matter which can be said to affect the jurisdiction of the court. It is merely that parties allow certain materials to be used as evidence which apart from their consent cannot be so used; 43 M. 609; 38 M. 160, Foll. If a party to a suit consents to the recitals in prior judgment being taken as proof of a will, he cannot object to their

EVIDENCE—Admissibility.

admissibility on appeal. ((*Spencer and Devadoss*, JJ.) GOPU NATARAJA CHETTY *v.* RAJAMMAL. **43 M.L.J. 448 = 16 L.W. 122 = (1922) M.W.N. 464 = 31 M.L.T. 125 (H.C) = 1922 Mad. 394.**

———*Admissibility — Objection — Appellate Court—When can question.*

An appellate Court cannot reject a copy of the document exhibited in the Court below with the consent of both the parties, at any rate without giving the parties an opportunity of producing the original. (*Seshagiri Aiyar and Napier*, JJ.) KAMULAMMAL AVERGAL *v.* ATHIKARI SANGARI SUBBA PILLAI. **48 I.C. 615 = 35 M.L.J. 11.**

———*Admissibility—Objection—Waiver.*

The omission by a party to prevent irrelevant evidence from being admitted will not in the absence of a deliberate consent to waive objections, cure the defect. 19 A. 76, Foll. (*Oldfield and Krishnan*, JJ.) CHINNA MEENA ROWTHER *v.* KUMARA CHAKKARAVARTHI IYENGAR. **36 I.C. 906.**

———*Admissibility—Mode of proof—Appellate Court.*

When the lower Court has given a finding that the document is legally proved the appellate Court should sparingly interfere with the finding when no objection was taken at the hearing. (*Abdur Rahim and Ayling*, JJ.) MANCHU KONDA APPADA *v.* ATCHI APPALASWAMY. **32 I.C. 760.**

———*Admissibility—Objection—On appeal—Procedure.*

Where on objection by a party, certain documents were excluded in appeal as being inadmissible and no application was made by the other party for other evidence as regards its admissibility *held*, that the procedure of the lower Court was not illegal. (*Ayling and Tyabji*, JJ.) PERUMA GOUNDAN *v* RAMA GOUNDAN. **28 I.C. 378 = 28 M.L J 115.**

———*Admissibility.*

It does not follow a document is invalid, merely because it may not be admissible in evidence. (*Pridaux*, A.J.C.) RAJE UDAJIRAM *v.* RAJESHWAR. **1923 Nag. 109.**

———*Admissibility—Document—Not acted upon.*

A document is obviously inadmissible, if it is not given effect to and the object for which it was executed, namely, the proposed compromise in a suit, fell through, as then the document has not the force of a decree. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. **1923 P. 37.**

———*Admissibility—Objection to—Waiver—Objection on appeal.*

The question of the mode of proof is a question of procedure and is capable of being waived by a party. Where the question of the admissibility of a document was not raised before the Court below by the defendants, the appellate

EVIDENCE—Admissibility.

Court would take if they waived their objection to the mode of proof adopted by the plaintiff. It is not open to the defendants on appeal to raise the question of the proper proof of these documents. (*Das and Adami, JJ.*) MT. BIBI KANIZ ZAINAB *v.* SYED MOBARAK HOSSAIN. **72 I.C. 748.**

———*Admissibility—Batwara Khashra.*

A Batwara Khashra is admissible in evidence. 38 I.C. 491, Foll. (*Coutts and Das, JJ.*) BABU TRILOKE PRASAD SINGH *v.* LAL UMANAND LAL. **1922 P. 447.**

———*Admissibility—Dying declaration made to Sub-Inspector.*

A statement made to a Sub-Inspector of Police just before death is not evidence (*Coutts and Ross, JJ.*) LACHMI LAL *v.* EMPEROR. **3 P. L.T. 398=23 Cr. L J. 218=(1922) Pat. 159=1922 P. 40.**

———*Admissibility—Objection on appeal.*

Where a documents is admitted without proof but without objection in the trial Court, no objection to its admissibility on the ground of want of formal proof can be taken in appeal. (*Miller, C. J. and Mullick, J.*) CHARITTAR RAI *v.* KAILASH BEHARI. **4 P. L W. 213=(1918) Pat. 145=44 I.C. 422=3 P.L.J. 306.**

———*Admissibility—Objection to—For the first time on appeal.*

If a document is once admitted in the lower Court without objection, no party can take objection to its being referred to by the Court. 11 B. 320; 34 C. 1059 M.P.C., Ref. (*Pratt, J.C., and Boyad, A.J. C.*) FIRM OF TRIKAMHI JIWANDAS & CO. *v.* TRUSTEES OF PORT TRUST, KARACHI. **35 I C. 96=10 S.L.R. 4.**

Appreciation of.

———*Appreciation of—Portion of evidence false.*

It is not safe to assume that a case must be false if some of the evidence in support of it appears to be ambiguous or is clearly untrue. There is on some occasions a tendency amongst litigants to back up a good case by false or exaggerated evidence. (*Sir John Edge*). BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. **24 C.W.N. 626 (P.C.).**

———*Appreciation of—Conflict between oral and documentary evidence.*

Where some of the verbal evidence was untrustworthy whilst the documents record a state of affairs which was often hard to reconcile with probabilities. *Held*, that unless the facts evidenced by documentary and oral testimony were so much at variance with known conditions, as to be incapable of reasonable explanation it was to those facts and those facts alone that the Court must trust to reach a safe conclusion upon the matter in controversy. (*Lord Buckmaster.*) IRSHED ALI *v.* MUSSMMAT KARIMAN. **28 C.L.J 173=20 Bom. L R. 790=24 M.L.T. 86=(1918) M.W.N. 394=21 O.C. 86=5 O.L J. 197=46 I C 217=22 C.W.N. 530 (P.C.).**

EVIDENCE—Appreciation of.

———*Appreciation of—Appellate tribunal—Knowledge of life and business—Use of.*

An appellate tribunal may bring their knowledge of life and business to bear even in cases where in the lower Court contemporary communications and course of business are used, and it can say that evidence given about them at the trial cannot be true. (*Lord Summer*). BRITISH SOUTH AFRICA COMPANY *v.* LENNON LINE. **34 I.C, 273 (P.C.).**

———*Appreciation of—Trial judge.*

In a matter of appreciation of evidence and the credibility of witnesses the opinion of the trial Judge should not be lightly disturbed on appeal. 39 B 386=42 I.A. 119. (*Sir George Farwell*) BOMBAY COTTON MANUFACTURING CO. *v.* MOTILAL **39 Bom. 386=19 C.W.N. 617=17 M.L T. 408=28 M L.J. 503=21 C.L.J. 528=17 Bom. L R 455=2 L W. 521=(1915) M.W.N 788=29 I.C. 229=42 I.A. 110. (P C).**

[*Also* 43 Cal. 707=33 I C. 583=28 C.L.J. 306=48 I.C. 561=39 All. 426. 39 I.C. 666=27 I.C. 276=20 C.L.J 50 (P.C.).]

———*Appreciation of—Discrepancies in.*

Discrepancies in the statements of witnesses on material points should not be lightly passed over, as the value of their testimony is seriously affected by them. (*Mr. Ameer Ali*). BIRJ LAL *v.* INDRA KUNWAR. **36 All .187=26 M.L.J. 442=18 C.W N. 649=12 A L J. 495=19 C.L J. 469=(1914) M.W N. 405=15 M.L T. 395=16 Bom. L.R. 352=23 I.C. 715=1 L.W. 794 (P.C.).**

———*Appreciation of—Conflicting findings—Genuineness of signature—Broad probabilities.*

Where the parties to a suit are at issue on a vital question, such as the genuineness of defit's. signature to the document sued on, the safe principles to consider which story fits in with the admitted circumstances and resulting probabilities. The Privy Council upheld the finding of the Chief Court as to the genuineness of the signature, in reversal of the decision of the first Court. (*Mr. Ameer Ali,*) G.W. DAVIS *v.* MAUNG SHWE GO. **38 Cal. 805=15 C W.N. 934=13 Bom L.R. 704=(1911) 2 M.W.N. 79=14 C.L.J 250=4 Bur. L.T. 229=8 A.L.J 1193=10 M L.T. 455=21 M L J. 1127=11 I C. 801=38 I.A 155 (P.C.).**

———*Appreciation of — Opinion of trial Judge—Question of fact.*

EVIDENCE—Appreciation of.

In a dispute of facts, great weight, naturally attaches to the finding of the trial Judge. (*Lord Robson*). DURGA KUNWAR *v.* MATHURA KUNWAR. **15 C.W N. 717 = 10 I.C. 963 = 10 M.L T. 216 (P.C.).**

———*Appreciation of—Identification—Mistake as to—Evidence if untrustworthy.*

The fact that a witness makes mistakes in identification is no reason for discrediting his evidence in other matters. (*Walsh*, J.) KHETAL *v.* EMPEROR. **45 A. 300 = 21 A.L.J. 143 = 24 Cr. L J. 526 = 1923 A. 352**

———*Appreciation of—Indian witnesses—Statements as to time.*

In India where references to time are generally mere approximations there is a large margin of honest error. (*Batchelor and Rao*, JJ.) EBRAHIMIJI *v.* EMPEROR. **15 Bom. L R. 297 = 19 I.C. 328 = 14 Cr. L J. 232.**

———*Appreciation of—Improbability.*

A theory of improbability in order to prevail against positive evidence must be clear and cogent; it must be such as to justify the rejection of the positive evidence as concocted and unreliable. 39 Bom. 388; 22 Cal, 519 ref. (*Mookerjee and Fletcher*, JJ.) SURENDRA KRISHNA MONDAL *v.* RANEE DASI. **24 C.W.N. 860 = 33 C.L.J. 34 = 59 I.C. 814 = 47 C. 1043.**

———*Appreciation of—Presumption against misconduct to be considered.*

Presumption against misconduct is among the probabilities to be taken into account in estimating the value of evidence and where the character and position of the person is above reproach this probability becomes stronger. The mere fact that this or that thing in a complete transaction is improbable does not count for much as against clear and distinct evidence of reliable witness. (*Jenkins*, C.J. *and Woodroffee*, J.) GOPEOSWAR DUTT *v.* BISSESSUR DUTT. **39 Cal. 243 = 13 I.C. 577 = 16 C.W.N. 263.**

———*Appreciation of—Conjectures.*

The mere fact that the promissory note is stamped with a King Edward stamp does not prove that the note was executed in 1911 and not in 1915, in the absence of any evidence that there were no King Edward stamps in existence in 1915. (*Moti Sagar*, J.) MT. CHANDO *v.* SIRI RAM. **1923 Lah. 607.**

———*Appreciation of—Witness—Reliability.*

Where a witness keeps quiet for many days after the occurrence and comes forward after the police had made a discovery he is not reliable. (*Shadi Lal*, C.J. *and Zafar Ali*, J.) RULLIA RAM *v.* EMPEROR. **5 Lah. L. J. 325 = 1923 Lah. 488 (2).**

———*Appreciation of—Reliability of witness—Accused* Brahmins.

EVIDENCE—Appreciation of.

Where the only ground which the lower Court has given for disbelieving them was that the accused were *Brahmins*, and that the deceased was a woman and that the witnesses did not consider the death of a mere woman—of any importance compared with the lives of *Brahmins* who were accused of her murder. *Held* the mere fact that (the accused are) *Brahmins* is not a sufficient reason for rejecting the evidence of witnesses who are *prima facie* reliable. (*Scott-Smith and Moti Sagar*, JJ.) SHEO RAM *v.* EMPEROR. **25 Cr. L.J. 45 = 1923 Lah. 436.**

———*Appreciation.*

Without deliberatly intending to tell a lie human beings are pronely to believe what they wish, to confound what they believe with what they heard and to ascribe to memory what is merely the result of imagination. (*Daniels and Lyle*, A.J.Cs.) ANJUMAN UNNISA *v.* ASHIQ ALI. **8 O.L.J. 439 = 3 U.P.L.R. (J. C.). 65 = 1922 Oudh. 178.**

———*Appreciation of—Oral and documentary evidence.*

The evidence of respectable persons with special means of knowledge owing to relationship to the parties of the matters they depose to, should not be viewed with suspicion especially in cases where only oral evidence will ordinarily be available. (*Baillie and Tweedy*, J. Cs.) GAYAPRASAD PANDE *v.* ABBAS BANDI BIBI. **25 I.C. 660 = 7 O.L.J. 383.**

———*Appreciation of—Parties interested in the result of the suit.*

It is a good working rule not to act upon the evidence of persons who are vitally interested in the result of the case unless that evidence receives corroboration from surrounding circumstances, (*Das and Adami*, JJ.) MUSSAMMAT CHANDRAMA KUER *v.* RAMGAYAN. **1922 P. 111.**

———*Appreciation of—Witness unbelievable in essential particulars.*

Where a party comes into a Court with a story, which cannot be believed in its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused. (*Mullick and Thornhill*, JJ.) PHATLI SINGH *v.* EMPEROR. **6 P.L.W. 167 = 19 Cr. L.J. 877 = 47 I.C. 73 = 1918 Pat. 288.**

———*Appreciation of—Falsity in portions—Credibility of the rest of the evidence.*

The maxim *falsus in uno falsus in omnibus* is a maxim of ancient origin which is not now implicitly followed by Courts in the appreciation of evidence. It is the duty of the Court to sift the evidence and separate the truth from the falsehood if it can. (*Maung Kin*, J.) MAUNG PO GYAW *v.* MAUNG SO. **1 Bur. L.J. 213 = 1923 Rang. 30.**

EVIDENCE—Circumstantial Evidence.

Circumstantial Evidence.

——— *Circumstantial Evidence—Affirmative proposition — Conflicting evidence—Necessary for establishing the proposition.*

The fact that witnesses contradicting an affirmative proposition, are not reliable is not sufficient to establish the proposition. The proposition that a person consented to a compromise is an affirmative proposition and if it is asserted by some witnesses and denied by others, it would be perfectly legitimate to take into consideration the circumstantial evidence with a view to show that the evidence of the first class of witnesses was true and that the other class was false. (*Lord Atkinson.*) SARAT KUMARI DASI *v.* AMULLYADHAN KUNDU. **32 M.L.T. 137=17 L.W. 481=27 C.W.N. 629=26 B.L.R. 548=37 C.L.J. 501=(1923) M.W.N. 392=1923 P.C. 13.**

——— *Circumstantial evidence—Value of.*

Where there is a break in the chain of the circumstantial evidence every piece of the evidence making up the charge must be on record or else the appellate Court may find it difficult to see how the particular conclusion has been arrived at, and consequently miscarriage of justice may result. In capital cases it is better that every fact be strictly proved on record, than extracting admissions from counsel. (*Knox and Walsh*, JJ.) SHEO NARAYAN SINGH *v.* EMPEROR. **21 Cr. L.J. 777=58 I.C. 457=2 U.P.L.R. (All.) 128.**

——— *Circumstantial evidence.*

Proof of intention or knowledge such as are mentioned in S. 373 of the Penal Code must be almost entirely a matter of inference from circumstances. (*Walmsley and Suhrawardy*, JJ.) KHETRAMANI DASI *v.* EMPEROR. **35 C.L.J. 451=24 Cr. L.J. 104=1922 C. 539.**

——— *Circumstantial evidence—Nature of.*

Circumstantial evidence must be exhaustive and negative the possibility of guilt of any other person or must leave no room for doubt as to the complicity of the accused. (*Holmwood and Sharfuddin*, JJ.) CHIRAJFUDDIN *v.* EMPEROR. **15 Cr. L.J. 293=23 I.C. 501=18 C.W.N. 1144.**

——— *Circumstantial evidence—Value of.*

In order to justify an inference of guilt from circumstantial evidence the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any, reasonable hypothesis than that of his guilt. 8 C. W. N. 279, Rel. (*Scott-Smith and Shadi Lal*, JJ.) SALEH *v.* EMPEROR. **40 P.W.R. 1917 (Cr.)=42 I.C. 129=18 Cr. L.J. 897=66 P.L.R. 1917.**

——— *Circumstantial evidence—Value of—Murder Case—Benefit of doubt.*

In a murder case where there is no direct evidence but only circumstantial evidence the jury must first decide what portions of the circumstantial evidence have been established and then see whether they constitute sufficient proof and if they have doubts, they must let the prisoner have the benefit of doubt. (*Johnstone*, C.J.) EMPEROR *v.* BROANING. **18 Cr. L.J. 482=39 I.C. 322=17 P.R. (Cr.) 1917.**

——— *Circumstantial evidence — Conviction —Rules for guidance.*

Circumstantial evidence in order to justify a conviction must be exhaustive and must exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused. But 'exhaustive' does not mean that every incident short of the criminal act must be proved by positive evidence, and the "possibility" must not be treated as signifying "physical possibility" but so high a degree of probability that a prudent man considering all the facts and realising that the life or liberty of the accused person depends upon the decision, feels that the accused committed the crime. (*Johnstone*, C.J. *and Broadway*, J.) THAKARDAS *v.* EMPEROR. **18 Cr. L.J. 875=38 I.C. 759=32 P.R. (Cr.) 1916.**

——— *Circumstantial evidence — Criminal trial.*

Conviction should be resorted to only after the reasonable exclusion of every conceivable hypothesis of innocence. (*Kensington and Ratligan*, JJ.) LACHMAN SINGH *v.* EMPEROR. **7 P.L.R. 1911=9 I.C. 400=12 Cr. L.J. 69=11 P.W.R. 1911 (Cr.).**

——— *Circumstantial evidence—Probative force of.*

Circumstantial evidence must like any other evidence be tested and weighed and must prevail or not by its own inherent proving force. (*Ayling and Kumaraswamy Sastri*, JJ.) MUNIANDI *v.* EMPEROR **16 M.L.T. 535=1 L.W. 1007=26 I.C. 332=16 Cr.L.J. 38=(1915) M.W.N. 34.**

——— *Circumstantial evidence— Settlement of accounts—Payment of part and pro-note for balance—Pro-note invalid for want of stamp—Payment of part is evidence of agreement.* (*Seshagiri Aiyar*, J.) SAMINATHA PATHAN *v.* RATHAKRISHNA PATHAN. **23 I.C. 85=15 M.L.T. 243.**

——— *Circumstantial evidence — Criminal trial.*

To justify an inference of guilt from circumstantial evidence the inculpatory facts must be incompatible and the innocence of the accused must be incapable of explanation upon any reasonable hypothesis other than that of his guilt. (*Jwala Prasad and Sultan Ahmad*, JJ). RAGHUNANDAN KOERI *v.* EMPEROR. **59 I.C. 858=22 Cr. L.J. 154=1 P.L.T. 684.**

——— *Circumstantial evidence—Nature of.*

Circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence (*Fox*, C.J.) EMPEROR *v.* ALI CASSIM HARIFF. **10 I.C. 929=12 Cr. L.J. 329=4 Bur. L.T. 97.**

EVIDENCE—Co-defendants.

Co-defendants.

———*Co-defendants.*

When both defts. controvert plaintiff's claim the evidence of one deft. cannot operate against the co-deft. as the latter had no opportunity to cross-examine the former. (*Stuart*, J.C. *and Kendal*, A J C.) RAM DIN v. KAYESTH PATHSHALA, ALLAHABAD. **25 I C. 823 = 1 O L J. 447.**

Criminal Trial.

———*Criminal trial—Character evidence.*

Evidence as to character of the accused is generally inadmissible against him. (*Richardson and Beachcroft* JJ.) RAGHU NATH LAL *v.* EMPEROR. **19 Cr. L.J. 776 = 46 I.C. 696 = 22 C.W.N. 494.**

———*Criminal trial—Accomplice—Duty to examine.*

If a witness can on reasonable grounds be regarded an accomplice the prosecution need not produce and examine him. (*Teunon and Shamsul Huda* JJ.) AGHREF ALI *v.* EMPEROR. **19 Cr. L.J. 81 = 43 I.C. 241 = 21 C.W.N. 1152.**

———*Criminal trial—Accused's statement.*

An accused's statement if to be relied upon, must be taken as a whole and nothing can be read into it which is not found within the four walls of the statement. (*Holmwood and Sharfuddin*, JJ.) PIKA BEWA *v.* EMPEROR. **15 C.L J. 512 = 13 Cr. L J. 195 = 14 I.C. 195 = 16 C.W.N. 1055.**

———*Criminal trial—Trackers—Value of.*

It is unsafe to rely completely on the evidence of trackers as to the correspondence of tracks. (*Scott-Smith and Shadi Lal*, JJ.) SALEH *v.* EMPEROR. **65 P.L.R. 1917 = 42 I.C 129 = 18 Cr. L.J. 897 = 40 P.W.R. 1917 (Cr.).**

———*Criminal trial—Statements made in the course of trial only and not in Police investigation.*

Statements made in the course of trial only while they were not made in Police investigation are not to be believed. (*Jones*, J.) BALA SINGH *v.* EMPEROR. **54 P L.R. 1916 = 17 Cr. L J. 284 = 34 I.C. 1004 = 47 P.W.R. Cr. 1916.**

———*Criminal trial—Identification.*

Sometimes the identification of the particular accused by witnesses to whom they are strangers is useful. (*Johnstone*, C J. *and Scott-Smith*, J.) NIKA *v.* EMPEROR. **17 Cr. L.J. 156 = 33 I.C. 636 = 19 P.W R. 1916 Cr.**

———*Criminal trial—First report—Omission—Track evidence, value of.*

Where the first report makes no mention of the offender and the complainant when questioned named nobody as his assailant the complainant's subsequent statement that he had identified the accused at the time of attack

EVIDENCE—Criminal Trial.

cannot be relied upon. The track evidence of a flimsy nature could not be believed without sufficient corroboration. (*Le-Rossignol*, J.) RONKI *v.* EMPEROR. **10 P.W.R. (Cr.) 1915 = 27 I.C. 846 = 16 Cr. L J. 222 = 91 P.L.R. 1915.**

———*Criminal trial—Penal Code, S. 34.*

To justify the application of S. 34 evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question must be required. (*Oldfield and Ramesam*, JJ.) **17 L.W. 21 = 1923 Mad. 187 (2).**

———*Criminal trial—Deposition of witnesses taken in a previous trial—Admissibility—Conviction.*

The accused and his father were placed together on trial but after the trial proceeded for sometime, it was decided to hold two separate trials and the judge then began the trial of the accused and exhibited the evidence already given at the joint trial. Then that judge ceased to hold office and his successors decided to hold trial *de novo* but exhibited the depositions of witnesses in the previous trial without examining them *de novo*. *Held*, that in doing so there was an irregularity in the procedure which would vitiate the proceedings and that the consent of the accused would not cure such irregularity. 12 C.W.N. 140, Foll. In such a case the appellate court has not plenary discretion to decide whether the accused has been prejudiced by the irregularity. 39 M. 449, Ref. (*Oldfield and Ramesam*, JJ.) *In re* KOTTAMMAL K. UMMAR HAJEE **46 Mad. 117 = 23 Cr. L J. 743 = 16 L.W 697 = 43 M.L J. 659 = 1923 Mad. 32.**

———*Criminal trial—Witness tendered.*

Where a witness was examined before the committing Magistrate and was simply tendered for cross-examination in the Sessions Court and the evidence before the Committing Magistrate was marked as exhibit in the Sessions Court, such procedure is illegal. (*Ayling and Tyabji*, JJ.) KOTTAI GADU, *In re*. **30 I.C. 439 = 16 Cr. L J. 615 = 1918 M.W N 544.**

———*Criminal trial—Statements of accused in police custody.*

Per *Sankaran Nair*, J.—Statements of accused in police custody are notoriously untrustworthy. (*Sankaran Nair, Sadasiva Aiyar and Bakwell*, JJ.) *In re* VAITHINATHA PILLAI. **18 Cr. L.J. 455 = 20 I C. 721 = (1912) M W.N. 825.**

———*Criminal trial—Depositions before committing Magistrate—Admissibility.*

Depositions before the committing Magistrate may on appeal be looked into by the High Court, where the cross-examination in the Sessions Court is not full. (*Ayling and Spencer*, JJ.) *In re* KITTA VALLYAM. **12 Cr L J 503 = 12 I.C. 223 = 10 M.L.T. 82.**

———*Criminal trial.*

In criminal cases, it is the weight of the evidence and not the number of the witnesses,

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which the Court has, and ought to consider. (*Daniels*, J. C.) GURDIN *v.* EMPEROR.
22 Cr. L J. 647=63 I.C. 407=24 O.C. 225.

——*Criminal trial—Defence witnesses—Credibility of—Duty of Court to prevent insinuations as to defence witnesses being related to accused.*

The evidence of persons produced in defence is not to be discredited merely because some of them are fellow castemen of the accused. General insinuations by the police regarding the relation of the defence witnesses to the accused but not to be allowed to be introduced in the evidence when the fact does not appear on the record and no question with reference thereto are put to the witnesses in the cross-examination. (*Kanhaiya Lal*, J.C.) RAMESHWAR TEWARI *v.* EMPEROR. **53 I C. 156= 20 Cr. L J. 748.**

——*Criminal trial—First report—Admissibility of, without proof.*

Any statement made by a complainant in his first report is not admissible in evidence without proof and cannot be used against the accused in his trial. When it is proved that the accused made a statement soon after the commission of the offence incriminating himself the reasonable inference is that it was a true representation of actual facts in the absence of rebutting evidence. (*Lindsay*, J.C.) DAL *v.* EMPEROR. **16 Cr. L J. 62=26 I.C 654= 1 O L.J. 687.**

——*Criminal trial—Quantum or value of evidence.*

The fouler the crime, the clearer and plainer the proof ought to be, though it cannot be laid down as a proposition of law that the quantum or value of evidence must be proportionate to the enormity of the crime or the consequences which may follow from conviction. (*Jwala Prasad and Sultan Ahmad*, JJ.) RAGHUNANDAN KOERI *v.* EMPEROR. **22 Cr. L.J. 154= 59 I.C. 858=1 P.L.T. 684.**

Documents.

——*Documents—Medical certificate.*

Where neither the Commissioner nor the medical man have been examined as a witness, the statements in the report by the Commissioner to the Court and in the certificate given by the Kabiraj are not admissible in evidence. (*Mookerjee and Buckland*, JJ.) BIBI JINJIRA KHATUN *v.* FAKIRULLA **67 I.C. 77= 34 C.L.J. 444**

——*Documents—Certificate—Mode of proof.*

A certificate is inadmissible in lieu of evidence of the writer himself. (*Carnduff and Richardson*, JJ.) PITES *v.* MAHOMED IDOO MIDH. **22 I.C. 654=19 C.W.N. 1148.**

——*Documents—Admissions in invalid document—Effect.*

Even if a document may not be valid for the purposes for which it was intended, it may be

EVIDENCE—Handwriting.

used as evidence of an admission by the person executing it when its execution has been admitted or proved. (*Miller*, C.J. *and Adami*, J.) GRANT *v.* EKLAL JHA. **3 P.L T. 386= 1922 P. 171.**

Duty of Court.

——*Duty of Court—Proof of fact—Personal testimony alone, if sufficient.*

Simply because a Judge's own testimony is the only evidence on a point he must not say publicly that there is none in the country for proving that point. (*Walsh and Ryves*, JJ.) CHANDER SEN *v.* MAN MOHAN LAL.
L.R. 3 A. 17.

Exclusion of.

——*Exclusion of—Competence of witness—Objection—When to be raised.*

The proper time to object to the competence of a witness is when he is tendered for examination. But this does not mean objection cannot be raised during the course of the defence argument. (*Mears*, C.J. *and Piggott*, J.) EMPEROR *v.* HAR PRASAD BHARGAVA.
45 A. 226=21 A.L.J. 42= L.R. 4 A. 19 (Cr.)=1923 All. 91.

——*Exclusion of—Duty of Court to admit all relevant evidence—Effect of omission.*

Held, that the Court below was not justified in refusing to exhibit the account books, which if regularly kept would be most material evidence in favour of the plff. and in refusing to examine more than four of his witnesses and that there should be a retrial of the case. (*Fletcher and Walmsley*, JJ.) LAL MOHAN SAHA *v.* TAZIMADDIN. **49 I.C. 756.**

——*Exclusion of—Power of Court—Refusal to examine witness.*

Any particular answer given by a witness, may after it is given, be ruled out as irrelevant but no Court can say beforehand that all the evidence not yet taken is going to be irrelevant and the Court's belief that the evidence is biased is not a valid ground for refusing to record it. (*Batten*, J.C. *and Hallifax*, A.J.C.) BHAGCHAND *v.* MUSAJI. **1923 Nag. 58.**

Handwriting.

——*Handwriting—Comparison of.*

It is not safe for a Court to base its conclusion on a mere comparison of handwriting. (*Sanderson*, C.J. *and Mookerjee*, J.) NANDU LAL MALIK *v.* PANCHANAN MOOKERJEE.
43 Cal 60=21 C W N. 1076= 42 I.C. 484=26 C.L J. 187.

——*Handwriting—Similarity—Test.*

Similarity of handwriting affords some assistance in determining whether the evidence adduced to connect a certain person with the

EVIDENCE—Hearsay.

forgery can be believed but the test is not at all a safe or certain test, 2 A.L.J. 444; 5 I.C. 355; 6 A.L.J. 184, Foll. (*Kanhaiya Lal*, A.J.C.) ABBAS QULI KHAN *v.* EMPEROR.
15 Cr. L.J. 643=25 I.C. 843=17 O.C. 276.

Hearsay.

———*Hearsay—Objection to admissibility of.*

The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its cost, but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible, and thereby obtain for the latter quite undue weight and significance. (*Lord Atkinson*), ATKIA BEGAM *v.* MUHAMMAD IBRAHIM. **6 L.W. 26=21 C.W.N. 345=(1917) M.W.N. 261=36 I.C. 20=10 Bur. L.T. 79 (P.C.).**

———*Hearsay—Question—Whether land is rent free—Admissibility.*

On the question was whether a certain land was held rent free for 50 years, hearsay evidence is admissible and sufficient to show that it was. (*Baillie*, S.M.) RUDRA PARTAB SAHI *v.* RAM BARAN PATHAK. **24 I.C. 790=1 O.L.J. 248.**

Horoscope.

———*Horoscope—Admissibility of.*

A Horoscope is admissible in evidence to show date of birth and parentage. It is corroborative or rebutting evidence of the person who had prepared it. (*Stuart and Kanhaiya Lal*, A.J.CS.) HAR BAHADUR LAL *v.* CHAND RAJ BAHADUR. **5 O.L.J. 655=48 I.C. 400=21 O.C. 298.**

Opinions.

——*Opinions—Report of officers.*

The report of a Tahsildar or Naib Tahsildar being the result of the investigation made by him is only an expression of his opinion in the matter and cannot be the sole basis of a decision in regard to a question of title. (*Banerji*, J.) KUBER SAITHWAR RAM TAHAL UPADHIA *v.* GUPTAI SAITHWOOR.
35 I.C. 237.

——*Opinions*— Panchayat —*Guilt of accused.*

The opinion of a *punchayat* as to the guilt of suspects when the latter decline to prove their innocence in the manner laid down by the *punchayat* is not a relevant fact. (*Shah Din*, J.) BEJA *v.* EMPEROR.
13 P.R. (Cr.) 1914=16 Cr. L.J. 33=26 I.C. 625=223 P.L.R. 1915.

——*Opinion—Witness—Value of.*

The opinion of a witness is not entitled to any attention. (*Stuart*, J.C. *and Kendall*, A.J.C.) RAM DIN *v.* KAYESTH PATHSHALA, ALLAHABAD. **25 I.C. 823=1 O.L.J. 447.**

EVIDENCE—Recitals.

Pedigree.

———*Pedigree—Proof of—Value of.*

In social conditions where people have not yet learnt to place exclusive reliance on written and printed records and where family pride, family rights encourage the maintenance of a body of oral family history, memory unaided by permanent materials is often a very sufficient medium of record and oral communication often preserves the record with singular uniformity. A pedigree does not therefore lose its value in proportion to its remoteness from the present time at least so far as names and kinship was concerned. (*Lord Sumner*). MEWA SINGH *v.* BASANT SINGH.
9 L.W. 416=24 M.L.T. 429=28 C.L.J. 53=1 P.W.R. 1919=21 Bom. L.R. 232=43 I.C. 540=28 P.L.R. 1919 (P.C.).

——*Pedigree—Proof of.*

Pedigree is not admissible unless person preparing it proves that he had special means of knowledge. (*Lyle*, A.J.C.) BHIMA SINGH *v.* MT. SUNDAR. **9 O.L.J. 186=1922 Oudh 218.**

Personal knowledge.

———*Personal knowledge — Judge — If relevant.*

A Judge is justified in using his knowledge of the character of the parties to a suit gained from several litigations in his Court to discredit their evidence. (*Rigg*, J.) SAN HA BAW *v.* MI KHOROW NISSA. **9 L.B.R. 160=45 I.C. 734=11 Bur. L.T. 98.**

Photograph.

———*Photograph—Father and son, if admissible.*

Where the question of legitimacy arises, the resemblance of the son with the putative father is evidence and so the photographs of both are admissible in evidence. (*Mookerjee and Carnduff*, J.) IMAMBANDI *v.* MATASUDDI.
13 I.C. 678=15 C.L.J. 621.
[On appeal, 47 I.C. 513=45 Cal. 878.]

Receipt, value of.

———*Receipt—Value of.*

Where a receipt is wanting in details and no reliable evidence is forthcoming as to the actual amount paid, *held* it was of very little value even though there was evidence that a substantial sum had actually been paid. (*Rattigan and Scott-smith*, JJ.) MUHAMMAD KHAN *v.* LALLA KISHORE CHAND
33 P.L.R. 1918.

Recitals.

———*Recitals — Evidence only against parties.*

The recitals in a deed are strictly speaking evidence only against the parties to the deed

S. N. DAR, B. A. LL. B.,
Pleader, High Court,
SRINAGAR (Kashmir)

EVIDENCE—Recitals.

and those claiming through them. (*Lord Parker*). SHRINIVASADAD BANSI *v.* KEHERBAI.
41 Bom 300=21 M L T 236=
32 M L J 175 19 Bom L R 151=
(1917) M.W.N 258=21 C W.N 538=
25 C.L.J. 311=39 I C 627=
44 I.A. 36 (P C.).

——*Recitals — Admissibility of, against strangers.*

Under ordinary circumstances and apart from statute recitals in deeds can only be evidence as between the parties to the conveyance and those claiming under them. Recitals of necessity in a deed of alienation by a Hindu widow are of little weight as against reversioners. (*Lord Chancellor*). NANDLAL *v.* JAYAT KISHORE ACHARYYA. 44 Cal 186=
20 M.L T. 335=31 M L.J. 563=
(1916 2 M.W.N 336=4 L W 458=
18 Bom. L.R. 868=14 A L.J 1103=
24 C.L.J. 487=1 Pat. L W 1=
21 C.W.N 225=10 Bur L.T 177=
36 I.C. 420=43 I.A. 249 (P.C.).

——*Recitals—Evidentiary value.*

Recitals are not by themselves evidence of necessity as against third parties impeaching the sale. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDRAKUNWAR. 36 All. 187=
(1914) M.W N. 405=19 C L J. 419=
16 Bom. L R. 352=18 C.W.N. 649=
1 L.W. 794=12 A.L J. 495=
23 I.C. 718=16 M.L T. 395 (P.C.).

——*Recitals—Deed.*

Recitals in a deed as to necessity are not evidence against the co-parcener to defeat whom, the deed was executed. (*Lyle*, J.) TIRBENI PRASAD *v.* RAMNARAYAN.
20 I.C. 951=11 A.L J. 718.

——*Recitals—Evidentiary value of.*

The recital of consideration in a deed and the admission of consideration before the registering officer, are evidence against the persons claiming through the executant of the deed. (*Chamier*, J.) IBRAHIM *v.* RAMNARAIN.
16 I C. 483=10 A.L.J. 87.

——*Recitals—Necessity.*

The recital in a mortgage-deed of an antecedent debt is not of much weight by itself. (*Richards*, C.J. *and Banerjee*, J.) BADRI DAS *v.* RAM RIKH. 13 I.C. 142.

——*Recitals— Pleadings — Substance of, reproduced in judgment.*

The substance of the pleadings narrated in the judgments may furnish evidence of the allegations made by the parties on that occasion. 9 C. 586; 3 C.L J. 521; 15 M. 19; 15 M. 378; 18 M. 73 Rel. (*Mookerjee and Cuming*, JJ.) KAILAS CHANDRA NAG *v.* BIJOY CHANDRA NAG. 36 C.L.J. 434=1923 Cal. 18.

EVIDENCE—Recitals.

——*Recitals—Deeds not inter partes.*

Recitals of boundaries of other lands in documents between third parties are not admissible in evidence. (*N R. Chatterjee and Suhrawardy*, JJ.) SOROJ KUMAR *v.* UMED ALI.
35 C.L.J. 19=1922 Cal. 251.

——*Recitals.*

The recitals in a will are not admissible in evidence to prove the truth of the facts mentioned in the will but they can be looked at for the purpose of seeing whether it is consistent with the assertions made by the testatrix during her lifetime. (*Ghose*, J.) PROMOTHO NATH MULLICK *v.* PRODUMNO KUMAR MULLICK.
69 I.C. 900=26 C.W.N. 772.

——*Recitals in judgment—As to age not binding when parties different.*

The statements of the plff.'s age in a decree to which the defts. or their predecessors were no parties, are not conclusive and binding against them. (*Teunon and Newbould*, JJ.) NILARATAN MITRA *v.* ABDUL GAFUR.
59 I.C. 3=32 C.L.J. 75.

——*Recitals—Value of.*

A recital in a document is not evidence as against a stranger to it. 6 Cal. 268, Rel. 12 M. I.A. 292; 12 W.R. (P.C.) 6; 23 Cal. 950, Dist. (*Mookerjee and Carnduff*, JJ.) RAHIM JAN *v.* IMAM BIBI. 18 I.C. 698=17 C.L J. 173.

——*Recitals—Third person.*

Recitals in a deed are not relevant evidence against a person who is not a party to the deed. But the parties to the deed may be presumed to have allowed the recitals to be embodied in the deed without objection. (*Kensington and Shahdin*, JJ.) MAHIDITTA MAL *v.* MRS. NICHOLSON. 133 P.W.R. 1913=
19 I.C. 770=224 P.L.R. 1913.

——*Recitals — Release deed by major member.*

If a major member of a family executes a release deed alleging that certain debts exist, the deed is evidence of the existence of such debt. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) ABDUL HUSSAIN ROWTHAN *v.* IBRAHIM ROWTHAR. 19 M L.T. 346=39 I C. 243=
3 L.W. 379.

——*Recitals—Effect.*

A man that takes a deed is not ordinarily bound by the statements contained therein. (*Wallis, Offg.* C.J., *Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NACHIAPPA GOUNDEN *v.* RANGASAMI GOUNDEN.
17 M.L.T. 87=2 L.W. 69=28 M L.J. 1=
26 I.C. 757=(1916) M.W.N 53 (F B).
[On appeal see 50 I C. 498=
42 Mad. 523 (P.C.).]

EVIDENCE—Recitals.

———*Recitals—Necessity—Weight of.*

Recitals in a document do not of themselves afford sufficient proof of legal necessity but in the case of old transaction, the Court should treat such recitals with more indulgence than in the case of new ones. 36 A. 187 Foll. (*Ayling and Sadasiva Aiyar*, JJ.) KANTHU *v.* DASA UPADHYA. **26 I.C. 376.**

———*Recitals—Evidence of necessity.*

Recitals in deeds as to necessity is some evidence that the facts recited were present to the minds of the parties to the transaction but they are not sufficient to prove the necessity in question. 5 C. 363, Rel. on; 12 W.R.P.C. 47 Ref. to. (*Tyabji and Spencer*, JJ.) KRISHNA RAO *v.* AYYASAMI PADAYACHI.
(1914) M.W.N. 490=24 I.C. 426=27 M.L.J. 138.

———*Recitals in a document—Value of.*

The recitals may be taken as evidence but they cannot shift the onus of proof. (*Ayling and Tyabji*, JJ.) KONERI SHOLAGAN *v.* KUMARAPPUDAYAN. **21 I C. 566=(1913) M,W.N, 924**

———*Recitals—Receipt of consideration.*

The receipt of consideration for a document, may be proved by the recital in the bond to that effect. (*Kanhaiya Lal*, A.J.C.) LACHMAN PRASAD *v.* HARDEO BAKSH.
37 I.C. 31=3 O.L.J. 373.

———*Recitals.*

The facts recited in a deed are not sufficiently proved by the recitals alone. (*Chamier and Evans*, J.C.) SHEO NARAYAN SINGH *v.* MAHABIR PRASAD. **9 I.C. 56.**

Shipping.

———*Shipping—Total loss.*

The circumstances attending the wreck of a vessel, the abandonment of the same by its officers and crew and the subsequent sale of the goods show that there has been a total loss of goods. That a cargo has been so damaged by the perils of the sea as to render an immediate sale necessary and the sale has taken place, sufficiently constitutes total loss. (*Davar*, J.) KANJI DWARAKADAS *v.* HARIDAS PURUSHOTAM. **36 Bom. 484=12 I C 837=13 Bom. L.R. 1211.**

Suspicion.

———*Suspicion—Sufficiency.*

Where one A, the plaintiff gave evidence that he was the legitimate son of one M but the defendants adduced evidence that he was the son of another man also named M and the High Court decreed in favour of the defendant on the ground that the defendant's case was quite possible and laid stress on the fact that A was supported in money by co-plaintiff, in whose favour A had executed a sale deed of a part of the property. *Held* that the decision was unsound. (*Sir John Edge*). MAHOMED ABDUL AZIZ *v* MIR TASDDUQ HUSSAIN.
21 C.W.N. 873=(1917) M.W N. 529=42 I.C. 3=7 L W. 66 (P.C.).

———*Suspicion—Not a ground for decision.*

The Court's decision must be based not upon suspicion but upon legal grounds established by legal testimony. (*Sir Lawrence Jenkins.*) SONA KUMARI BIBI *v.* BIJOY SINGH
44 Cal .662=1 P.L W 425=5 L W. 711=32 M L.J. 425=21 C.W N 585=21 M.L T 344 15 A L J. 382=25 C.L J 508=19 Bom L R 424=(1917) M.W.N. 473=40 I C. 242=44 I.A 472 (P.C.).

———*Suspicion—Judicial decision.*

Suspicion though a ground for scrutiny of evidence, cannot be made the foundation of a judicial decision. (*Ameer Ali.*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS.
34 All. 511=39 I A. 68=12 M.L T 392=15 O C 278=14 Bom. L.R. 1073=10 A.L.J. 373=17 C.W N 49=16 C.L J 629=(1912) M.W.N. 1052=17 I C 396=23 M.L.J 741 (P.C.).

———*Suspicion—Not a ground for judicial decision.*

A Court should not rest its decision merely on suspicion unsupported by legal testimony. 25 C.W.N. 409. (*Mookerjee and Chotzner*, JJ.) PROMODE KUMAR ROY *v.* KALI MOHAN SAHA. **27 C.W N. 305=36 C.L.J. 396=1923 Cal 228.**

———*Suspicion—Not a ground for decision.*

Though there may be ground for suspicion, though the conduct of the parties may engender doubt, the Court's decision must rest not upon suspicion but upon legal grounds established by legal testimony. 44 Cal. 662 Foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. **25 C.W.N. 942=66 I C. 694=34 C.L.J. 333.**

———*Suspicion—Nolla ground for decision.*

The decision of the Court should rest upon legal grounds established by legal testimony. 44 Cal. 662; 25 C.L.J. 508 and 23 C.W.N. 321 Ref. (*Mookerjee and Buckland*, JJ.) BEPIN KRISHNA RAY *v.* JOGESHWAR RAY.
26 C.W.N. 36=66 I.C. 345=34 C.L J. 256.

Thumb impression.

———*Thumb impression—Similarity of.*

Similarity of the thumb impression taken at the time of presentation, if corroborated by other evidence in the case, is sufficient for conviction but by itself is not so. (*Spencer and Seshagiri Aiyar*) *In re* SINGRI BHIMA.
27 I.C. 900=16 Cr. L.J. 228.

EVIDENCE—Trial.

Trial.

———*Trial—Cogent grounds to alter conclusion.*

Held, cogent grounds would be needed to alter the conclusion drawn by the trial Court from the oral evidence which the appellant gave in spite of the fact that he spoke Greek and that it seemed doubtful whether the interpreter thoroughly understood Greek while the Court did not at any rate profess to understand that language. (*Lord Sumner*). SOCRATES ATYOHIDES *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **18 L W. 664 = 25 Bom. L.R. 116 = (1923) M W.N. 846 = 1922 P.C. 371.**

———*Trial—Incidents in — Statement of Judge.*

Per *Mookerjee*, J.—The statement of the presiding Judge as to what actually took place before him is conclusive. 21 C.L.J. 377, Ref. (*Sanderson*, C.J., *Mookerjee*, *Fletcher*, *Teunon and Chaudhuri*, JJ.) FATEH CHAND *v.* EMPEROR. **21 C W.N. 33 = 44 Cal. 477 = 38 I.C. 945 = 18 Cr. L.J 385 = 24 C.L.J. 400 (F.B.).**

Value of.

———*Value of—Agreement about dower.*

The materiality of evidence regarding social position and customary dower, if an agreement about dower is clearly proved, is not obvious, but, it affords some test of the reliability of the witnesses of the party alleging agreement if the conclusion on the agreement was unfavourable to her. In the case of agreement entered into 37 years back, the oral evidence of the agreement, must be clear and convincing in order to establish a claim against the estate of the man who is said to have been a party to it. (*Lord Salvesen*). MT. HAFIZAN BIBI *v.* MT. SUBA BIBI. **44 M L.J. 714 = 37 C.L.J. 461 = 27 C.W.N. 854 = 18 L.W. 670 = L.R. 4 A. (P.C.) 95 = 1923 P.C. 29 (P.C.).**

———*Value of—Decree in favour of co-sharer—Partition between co-sharers and opponent.*

Where there was a decree in favour of a co-sharer against Government followed by a partition in accordance with the decree between the co-sharers and Government. *Held*, the decree being followed by partition is relevant and is an important piece of evidence. (*Lord Phillimore.*) (KUMAR) NARESH NARAYAN ROY *v.* SECRETARY OF STATE FOR INDIA. **45 M L J. 444 = 50 Cal 446 = (1923) M.W.N 511 = 50 I A 121 = 32 M.L.T. (P.C.) 162 = L.R. 4 (P.C) 50 = 28 C.W.N. 453 = 1923 P.C. 1 (P.C.).**

———*Value of—Will—Proof of—Attesting witnesses — Duty of propounder to call—Similarity in handwriting.*

In case of doubt or dispute, justice requires that the best evidence procurable if the signature should be furnished. An attempt to support the signature by anything that falls short of the necessary standard which though not fatal is of serious defect. (*Lord Buckmaster*). RAM GOPAL LAL *v.* AIPNA KUNWAR. **44 All. 425 = 49 I.A. 418 = 31 M.L.T. 277 = 1922 P.C. 366 (P.C.).**

EVIDENCE—Value of.

———*Value of—Thakbast Map and Khasra.*

The entries in Thakbast map and Khasra made by an Amin before and for the preparation of survey have no evidential value. (*Amir Ali*). JAGDEO NARAIN SINGH *v.* BALDEO SINGH. **3 P.L.T. 605 = 36 C.L J 499 = 49 I.A. 399 = 32 M.L T. 1 = 2 P. 38 = 45 M.L.J. 460 = 1922 P.C. 272 (P.C.).**

———*Value of—Witnesses, Discrepanciesin.*

Discrepancies in the statements of witnesses, on material point if passed over somewhat lightly, affect the value of their testimony and obviously such an effect is undesirable. (*Amir Ali.*) LALA BRIJ LAL *v.* INDRA KUNWARA. **26 M.L.J 442 = 18 C W.N. 619 = 12 A L.J. 495 = 36 A. 187 = 19 C L J 460 = (1914) M.W.N 405 = 15 M.L.T 393 = 16 Bom. L.R. 352 = 23 I C 715 = 1 L.W 794 (P.C.).**

———*Value of—Torture resorted to, to extract the evidence.*

Evidence obtained by torturing the deponent has no value. (*Walsh*, J.) GOKUL SINGH *v.* EMPEROR. **35 I.C. 527 = 17 Cr. L.J. 351.**

———*Value of—Relevancy.*

A Kabuliat executed by the plaintiff's tenure-holder in favour of superior landlord was used as evidence in the case against the defendants. *Held* whatever might be the effect of the kabuliyat as regards the relation of the plaintiffs to their own landlord it cannot have the effect of affecting the defendant's state in any way which existed before the date of the Kabuliat. (*Walmsley and Ghose*, JJ.) BHAJAN SHEIKH *v.* BALAI SARKAR. **1923 Cal. 375.**

———*Value of—Maps — Thak and Survey maps—Admissibility in evidence.*

Thak and survey maps are not conclusive as to whether lands which formed part of the bed of the river were included in the permanent settlement of 1793. It is not permissible for a Court to act on the assumption that in 1793 a state of things existed different from what appeared from any evidence before the Court. 2 C. 91, Rel. (*Mukerjee and Cuming*, JJ.) SECRETARY OF STATE FOR INDIA *v.* UPENDRA NARAIN ROY. **36 C.L J. 336 = 1923 Cal. 247.**

———*Value of—Judgment.*

The production of judgment in a previous case merely established the fact that there has been a judgment but it does not prove the correctness of the previous decision. (*Mookerjee and Cuming*, JJ.) BAIDYA NATH DUTT *v.* ALEE JAN BIBI. **36 C.L.J. 9 = 1923 Cal. 240.**

EVIDENCE—Value of.

———*Value of — Thumb-impression — Forgery.*

A Court should exercise great caution in arriving at a conclusion by a comparison of thumb-impressions. The positive evidence of witnesses who were undoubtedly present and eye witnesses to the transaction should not be lightly brushed aside. 1 C.W.N. 339, Ref. (*Mookerjee and Cuming*, JJ.) BAIDYA NATH DUTT *v.* ALEE JAN BIBI. **36 C L J. 9= 1923 Cal. 240.**

———*Value of—Negative.*

Very little weight can be attached to the evidence of a negative character. (*Mookerjee and Carnduff*, JJ.) IMAMBANDI *v.* MATASUDDI. **13 I.C. 678 = 15 C.L.J 621.**

———*Value of—English and Vernacular—Record of depositions.*

In cases where evidence is given by a witness in his own language, the vernacular record is always treated as more reliable and entitled to greater weight but this maxim could not always be safely applied in cases where a Magistrate who is taking down the evidence simultaneously in English understands the language as well as his reader. (*Abdul Qadir*, J.) SADHU SINGH *v.* THE CROWN. **24 Cr L.J 625 = 1923 Lah. 167.**

———*Value of—Measurement and plan.*

Where in a deed there is variation in measurement and plans the plans are to be preferred to measurement. (*Beavan Pelman*, J.) JOHRI *v.* JOWAHRA. **58 I C 67 = 91 P.L R. 1919.**

———*Value of—Finger prints—Duty of Court.*

There is nothing in the so-called science of finger prints or the qualification of an expert in it which prevents the Court from applying its own eyes and mind to the evidence and verifying the results submitted to it by experts. If the finger prints are clear enough to sustain an argument there is no reason why an argument by way of deduction should not be as sure foundation for a conclusion and it may be a better one than any based on direct evidence. (*Olafield and Ramesam*, JJ.) PUBLIC PROSECUTOR *v.* VIRANNA. **(1922) M.W.N. 642 = 16 L.W. 663 = 23 Cr L J 604 = 31 M L.T. 427 = 1923 Mad. 178.**

———*Value of—Deposition.*

A few (say two) casual and somewhat ambiguous phrases in a deposition cannot destroy the very clear effect of the whole deposition. (*Batten*, J.C. *and Halifax*, A.J.C.) MT. KUSHIBAI *v.* MANRAKHAN. **1923 Nag. 265.**

———*Value of—Evidence of party—Question of onus.*

The weight to be attached to the evidence of a party is not governed by any such extraneous consideration as that of the burden of proof but depends entirely on the intrinsic evidence. (*Kotwal*, A.J.C.) GOVARDHANDAS *v.* HARLAL RAMSUKH. **1923 Nag. 62.**

EVIDENCE—Value of.

———*Value of—Oral evidence—Registered document.*

A defence based on oral evidence to frustrate a registered instrument should be always looked on with suspicion. (*Mitra*, A J C.) VITHU JAIRAM *v.* AKARAM. **42 I.C. 372.**

———*Value of—Succession of judgments.*

A succession of judgments is valuable evidence. (*Ahsworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O L J 552 = 1923 Oudh 61.**

———*Value of—Statement of person as to his own age.*

Though a man cannot give direct evidence of his own age his statements on the subject are not to be dismissed as of no value. (*Kanhaiya Lal* J.C. *and Daniels*, A.J.C.) KANHAIYA LAL *v.* MOHCMMAD MAHMUD ALAM. **63 I C. 525 = 8 O.L.J. 324.**

———*Value of—Reliability of witnesses.*

The mere fact that witnesses are relatives and interested in the suit is no ground to disbelieve them if the point can only be established by their testimony. (*Lindsay*, J.C.) GHANSHYAMDAS *v.* HARDEI. **32 I C. 380 = 2 O.L J. 562.**

———*Value of—Cross-examination of opposite party's witnesses.*

A party is entitled to have taken into consideration the statements of the opposite party's witnesses in cross-examination. (*Lindsay*, J.C. *and Rafique*, J.) MUHAMMAD HUSSAIN *v.* LALJI SINGH. **25 I.C. 648 = 1 O.L.J. 366.**

———*Value of—Thak maps—Revenue register—Possession.*

Thak maps are good evidence of possession at the time they were made, but they are no evidence of title acquired by prescription or adverse possession. The object of the *Thackbust* survey, which preceded the Revenue Survey, was to ascertain the position of the boundaries and area of estates and villages and it was no part of the duty of the Revenue Officers conducting the *Thakbust* operations to record the prescriptive rights. (*Das and Kulwant Sahay*, JJ.) CHATTRAPAT PRATAP BAHADUR SAHI *v.* G. LEE. **4 P.L T. 487 = 1 P.L.R. 322 = 1923 P. 558.**

———*Value of—Child witness—Credibility.*

The mere fact that the evidence of the only eye-witness of a crime is that of a child of 6 years of age is not a ground for not relying on it, especially when the evidence is given without hesitation and without the slightest suggestion of tutoring and there is corroboration of the evidence and of the child's subsequent conduct immediately afterwards. (*Miller*, C.J. *and Adami*, J.) FATU SANTAL *v.* EMPEROR. **2 P.L T. 288 = 61 I.C. 705 = 22 Cr. L.J. 417 = 6 P.L.J. 147.**

THE INDIAN EVIDENCE ACT

(ACT I OF 1872)

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EVIDENCE ACT (I of 1872), S. 2.

———S 2—*Extradition Act.*

Per *Woodroffe*, J.—The Evidence Act is not exhaustive. The records of the German Court authenticated in the manner prescribed by Ss. 14 and 15 of the English Extradition Act, are admissible in evidence. (*Woodroffe, Mookerjee and Chitty*, JJ). RUDOLPH STALLMAN, *In re*. **39 Cal. 164=15 C W.N. 1033=12 I.C. 273=12 Cr.L.J, 505=14 C.L.J. 373.**

———S 2—*Scope of the Act—Not exhaustive—English law.*

The provisions of the Evidence Act are not exhaustive of the rules of evidence and the Courts can invoke the aid of the principles of jurisprudence or of English law as supplementing and explaining the rules of evidence given in the Act. (*Spencer and Seshagiri Aiyar*, JJ.) ANNAVI MUTHIRAYAN *v.* EMPEROR.
39 Mad. 449=28 M L.J. 329=(1915) M.W.N 229=28 I.C. 518=16 Cr.L J. 294=17 M L T. 214.

———S. 2 (1)—*Muhammadan Law—Presumption of death under—If available.*

The presumption under the Muhammadan Law of inheritance that a person missing, must be presumed to have died on the date of disappearance cannot be availed of by reason of cl. (1), S. 2 of the Evidence Act. (*Lindsay and Kanhaiya Lal*, JJ.) MAIRAJ *v.* ABDUL. **63 I.C. 286=19 A L J. 713.**

———S. 3—*Evidence—Admission of—Effect.*

Admission of evidence for one purpose in a suit is evidence for all purposes in the case. (*Lord Macnaghten*) BANK OF BOMBAY *v.* NAND LAL THACKERSEYDAS. **37 Bom. 122=40 I.A 1=12 M.L.T. 646=(1913) M.W.N. 29=15 Bom L R 1=24 M L J. 176=17 C.L J. 146=17 I.C. 663=17 C.W.N. 353 (P.C.).**

EVIDENCE ACT (I of 1872), S. 3.

———S. 3—*'Proved'.*

The Act, which adopting the requirements of the prudent man as an appropriate concrete standard by which to measure proof, is at the same time expressed in terms or conditions of probability and in probability so that where forgery comes in question on a civil suit, the presumption against misconduct is not without its due weight as a circumstance, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. (*Mookerjee and Buckland*, JJ.) PRASANAN MAYI *v.* BAIKUNTANATH. **34 C.L J. 384=66 I.C. 782=25 C.W N. 779.**

———S. 3—*Proof—Impossibility to come to any conclusion—An order of law.*

A Dist. Judge in appeal held that in all probability the tenant deft. had paid an enhanced rent but he declined to draw the inference that this rent was paid at the enhanced rate contracted for by the tenants as in his opinion it was absolutely impossible to determine what sum was paid; the finding involves an error of law as the test of proof applied is one no embodied in S. 3 of the Evidence Act. (*Mookerjee and Chatterjee*, JJ.) GANESH DUTT SINGH *v.* LACHMI NARAIN SINGH.
34 I.C. 783=23 C.L J. 209.

———S. 3—"*Proved*" *and* "*Disproved*"—*Explained.*

The test of whether a fact in issue was proved or disproved is whether a prudent man after considering the matters before him deemed it proved or not, and the Courts can never be bound by any rule but by their judicial discretion. The same rule of evidence applies both to Civil and Criminal trials. (*Woodroffe, Coxe and Chatterjee*, JJ.) D. WESTON *v.* PEARY MOHUN. **40 Cal 898=23 I.C. 25=18 C.W.N. 185.**

EVIDENCE ACT (I of 1872), S. 3.

——S. 3—*' Proved '—Objection that more evidence might have been adduced.*

Where there is sufficient evidence of a fact it is no objection to proof of it that more evidence might have been adduced. Demonstrations or a conclusion at all points logical, cannot be expected nor can a decree of certainty be expected of which the matter in question is not reasonably capable. (*Jenkins*, C J. *and Woodroffe*, J.) GOPESSUAR DUTT *v.* BISSESSUR DUTT.
39 Cal 245 = 13 I C. 577 = 16 C.W N. 265.

——S. 3—*Misrepresentation of fact.*

A misrepresentation as to the intention of a person (on stating the purpose for which the consent is asked) is a misrepresentation of ' fact ' within the meaning of the section. (*Johnstone*, C.J. *and Scott-Smith*, J.) EMPEROR *v.* SOMA.
18 Cr. L.J. 18 = 36 I C 850 =
17 P R. Cr. 1916.

——S. 3—*Magistrate—Whether Court.*

The Cr. P. Code contains no definition of " Court " but according to S 3 of the Evidence Act the word " Court " includes all Magistrates. *Quære*: Whether the definition of " Court " can be held to apply to the Cr. P. Code? (*Chevis and Broadway*, JJ.) ABDUL AZIZ *v.* EMPEROR. 17 Cr L J 491 =
36 I.C. 171 = 34 P.R.Cr. 1916.

——S 3—*Documents—Evidence.*

Documents which are neither produced, not proved, nor admitted in evidence in a case before the Court, should not be taken into consideration in its judgment though they may have been produced in another case between the same parties. (*Shah Din and Scott-Smith* JJ.) BIBI PUTLI *v.* JAWALA DEVI.
7 P L.R. 1912 = 16 I C 488 =
126 P.W.R. 1912.

——S. 3—*Court—Bengal Land Registration Act* VII *of* 1876—*Deputy Collector holding enquiry—If a Court.*

A Deputy Collector holding an enquiry under the Bengal Land Registration Act for the purpose of registering the names of rival claimants is a Court within S. 3 of the Evidence Act and the enquiry held by him is a judicial enquiry. (*Jwala Prasad and Coutts*, JJ.) RAMA SINGH *v.* HARAKHD HARI SINGH. 47 I.C. 710.

——S. 3—*Fact in issue if can be proved by one not called as a witness.*

A fact in issue cannot be held to be proved by secondary evidence of statements made by a person who is not called as a witness and who is held by the Magistrate to be a liar. (*Pratt*, J.C. *and Crouch*, A.J C.) BAKSHATI *v.* EMPEROR. 13 Cr L J 28 = 13 I C. 220 =
5 S L.R. 136.

——S. 4—*Conclusive proof — Declaration under Land Acquisition Act.*

A declaration under S. 6 (3), Land Acquisition Act, may be conclusive as to the land being needed for a public purpose but it does not debar a Court from inquiring into the validity

EVIDENCE ACT (I of 1872), S. 6.

of the steps which led up to that declaration. (*Greaves*, J.) MANIK CHAND *v.* CORPORATION OF CALCUTTA.
66 I.C. 600 = 48 Cal. 916.

——S. 4—*Scheme suit—Burden of proof.*

A Court is not bound to decide in a scheme suit, whether the alienations of the trust property were binding on the institution. Where a person sets up that a temple is a public one, the burden lies on him to prove it. (*Ayling and Srinivasa Iyengar*, JJ.) SUBRAMANIA AIYAR *v.* VENKATACHALA VADHYAR.
(1916) 2 M W.N. 351 = 37 I C. 688 =
4 L.W. 444.

——S 5—*Relevancy of evidence—Court's powers—Extent of.*

In determining the relevancy or otherwise of any evidence the Court cannot consider matters beyond the purview of Evidence Act. (*Piggott*, J.) HEARSY *v.* MRS. EVA FORSTER.
15 Cr. L J. 429 = 24 I C. 165 =
12 A L.J 285.

——S. 5—*Relevant evidence—Case must be decided on.*

In the trial for the murder of a particular person, the case against the accused under trial, should be determined on evidence which is relevant and admissible under the Act and on the strength of evidence which the Court may consider necessary to record and appreciate with reference to two entirely different murders committed by the accused. (*Shah and Crump*, JJ.) GANGARAM *v.* IMPERATOR. 22 Bom L R. 1274 =
62 I.C. 545 = 22 Cr. L J. 529.

——Ss. 5 and 167—*Court's duty to exclude irrelevant evidence.*

It is the duty of the Court to exclude an irrelevant document from evidence even if no objection is taken to its admissibility by the parties. Omission to object would not render it admissible. (*Miller*, C.J. *and Mullick*, J.) SUNDRA KUER *v* RAM KAIR CHOWBEY.
5 Pat. L.J. 410 = (1921 Pat. 17 =
57 I.C. 561 = 1 P L T. 702.

——S. 6—*Statement made to police.*

Statement of a person, differing from a written report handed over by the same person but written by another, cannot be admissible against person writing the report. (*Lindsay*, J.) JALPA PRASAD *v* EMPEROR.
20 Cr. L.J. 311 = 50 I C. 487 =
17 A L J. 760.

——Ss. 6 and 8—Res gestae—*Report by woman raped—Statements to neighbours.*

A woman, on being questioned by a relative of her husband, told him that the accused had raped her and asked him to report the matter to her father-in-law and subsequently made the same statement to her father-in-law. It was held that the statements were inadmissible under S. 6 but admissible as a complaint under S. 8 of the Evidence Act. (*Maritneau*, J.) RAMAN *v.* EMPEROR. 4 Lah. L.J. 491.

EVIDENCE ACT (I of 1872), S. 6.

——S 6—*Hearsay evidence—Statement by bystander—Admissibility.*

A statement by a person alleged to be the eye witness of a murder made to persons who came to the scene of occurrence after the murderer has left the place, cannot be proved against the accused for the purpose of showing that their names were mentioned as murderers. In order to make the statement of a bystander admissible it must have been made as contemplated by S. 6 and illustration (*a*) to S. 6 at the time the transaction took place or so shortly before or after as to form part of the transaction. The statement would be irrelevant if made after the transaction is complete. The admissibility depends on the continuity of the transaction. (*Chevis and Shadi Lal*, JJ.) JOWALASAHAI *v.* EMPEROR.
34 P.R. Cr. 1914 = 27 I.C. 664 = 16 Cr. L J. 184 = 226 P.L.R. 1915.

——S. 6—*Statement by testator before registring officer—Admissibility of.*

Statements made by a testator at the registration of the will are admissible in evidence. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) MUTHU KRISHNA NAICKEN *v.* RAMACHANDRA NAIKEN.
47 I.C. 611 = 37 M.L J. 489.

——S. 6—*Rape—Statement by complainant after occurrence.*

In a case of rape, a statement made by the complainant immediately after the occurrence to another woman is admissible, not as evidence of the truth of the charge alleged, but as corroborating the credibility of the complaint and of the evidence of the consistency of her conduct. (*Maung Kin*, J.) NGA SAN PU *v.* EMPEROR. **43 I.C. 443 = 19 Cr. L.J. 155.**

——S. 8—*Motive—What is.*

In a trial for the murder of a particular person, the prosecution should not show, that on two previous occasions the accused under trial had committed murders but had falsely charged and got convicted some others as murderers. The fact that the previous murders have been committed by the accused does not constitute a motive or preparation under S. 8. Per *Crump*, J.—A motive is that which moves a man to do a particular act. Whether the belief which produces the state of mind is true or false, the motive remains the same and the truth or falsity of the belief is not really in question. (*Shah and Crump*, JJ.) GANGARAM *v.* IMPERATOR. **22 Cr. L.J. 129 = 62 I C. 545 = 22 Bom. L.R. 1214**

——Ss. 8, 25 and 26—*Statement to Police officer and complainant in his presence—Admissibility of—Corroboration.*

The evidence of Police officer and the complainant as to the pointing out of the various places by the accused was a confession of his guilt made while he was in the custody of the Police officer and inadmissible under Ss. 25 and 26 of the Evidence Act. The evidence could not be treated as evidence of conduct, apart from the accompanying statement under S. 8 of the Act. The statement made by the Police officer to the complainant in the presence of the accused that he (the accused) was going to show the various places connected with the theft, was not admissible under S. 8, Expln. 2 because the conduct apart from accompanying statement, was not shown to be relevant and under the circumstances such a statement could not be said to affect the conduct of the accused. (*Heaton and Shah*, JJ.) HERA GOBER *v* EMPEROR. **20 Cr. L J. 681 = 52 I.C. 601 = 21 Bom. L.R 724.**

EVIDENCE ACT (I of 1872), S. 8.

——S. 8—*Conduct of parties—Intention.*

The conduct of the parties after the transaction is important in ascertaining the intention of the parties as to when the property should pass. 7 P.R. 1897 and 68 P.R. 1900, Ref. (*Johnstone and Chevis*, JJ.) BHAGAN *v.* ALLAHA DITTA. **27 P L R. 1911 = 41 P.W.R. 1911 = 9 I C. 847 = 55 P.R. 1911.**

——Ss. 8 and 21—*Statements after long time.*

Evidence regarding the statements made by a person, when they did not accompany any conduct on his part nor made at a time when a document was executed as to the circumstances of execution of document is not relevant under S 3 or S. 21, Evidence Act. (*Benson and Sundara Aiyar* JJ). NARSAMMA HEGADTHI *v.* BILLA KESU PUJARI. **31 I C. 543 = 25 M.L.J. 637.**

——S. 8—Res gestae—*Admissibility of.*

Statements accompanying conduct, and explaining such conduct, are relevant. (*Mitra*, A.J.C.) TUKARAM *v.* ARJUNA. **45 I.C. 904.**

——S. 8—*Offence under S. 147, I.P.C.—Subsequent conduct.*

Where the evidence against a person charged with an offence under S. 147, I.P.C., is open to doubt, his conduct, sometime after the occurrence cannot be taken to be evidence under S. 8 of the Evidence Act and cannot be used against him in the case. (*Adami*, J.) ENAYET KARIM *v* EMPEROR. **54 I.C. 775.**

——Ss. 8 and 27—*Accused pointing out spot to Police officer—Conduct.*

If the accused accompanies a Police officer and shows the spot where the stolen property is concealed it amounts to conduct, proof of which is admissible under S. 8. (*Saunders*, A.J.C.) EMPEROR *v.* NOJA AUNG BA.
17 Cr. L J. 402 = 35 I.C. 962 = (1916) 2 U.B.R. 114.

——S 8, Expl. 2—*Informer's statement—When admissible — Inference from circumstances.*

An informer's statement to the police that he purchased opium from the accused is not admissible unless it was made in the presence of the accused but the finding of marked coins on

EVIDENCE ACT (I of 1872), S. 9.

the accused and opium on the informer are circumstances in this case from which it may be inferred that the accused sold the opium. (*Twomey*, J.) AH SEIN *v.* EMPEROR
12 Cr. L J. 479 = 12 I C 87 = 4 Bur. L.T. 222

———S. 9—*Absconding of accused—Inference.*

If after the commission of a crime, a person whose name is mentioned as a participator in the crime absconds, his conduct implies that he is concerned in the crime. Anything therefore which tends to explain his conduct and furnishes motive other than a guilty conscience is relevant under S. 9. (*Shah and Crump*, JJ.) GANGARAM *v.* IMPERATOR. **22 Cr. L.J. 529 = 62 I.C. 545 = 21 Bom. L.R. 1274**

———Ss. 9, 11, 14, 15—*Letters Patent, cls.* 25, 26.

In a trial an evidence of design motive and intention in a theft occurred subsequently under the circumstances, similar to those that were at the time of the offence in the trial, was admitted by a Judge, to which due objection was taken. *Held*, the piece of evidence was inadmissible under Ss. 9, 11, 14 and 15 of Evidence Act and as cls. 25, 26 of the Letters Patent did not authorise the Court hearing the reference to direct a new trial, a final disposal by the Judge after rejecting improperly admitted evidence was asked. (*Sanderson*, C.J.) EMPEROR *v.* PANCHU DAS. **47 Cal. 671 = 24 C W.N. 501 = 58 I C. 929 = 21 Cr. L J 849 = 31 C L.J. 402 (F. B.)**

———Ss. 9, 11 and 34—*Omission of entry of payment in account book.*

The absence of an entry of payment in an account book is a relevant fact under Ss. 9 and 11 of the Evidence Act. (*Mookerjee and Beachcroft*, JJ.) GANGARAM AGARWALA *v.* LACHIRAM KISHEN DYAL. **28 I C 705 = 19 C.W.N 611**

———Ss. 9, 11—*Statement by lessor in lease—If evidence against third parties.*

A statement by the grantor of a lease regarding the ownership of certain property situate on the boundary of the land demised can be used as evidenae against persons not parties to the lease transaction. 12 I. C. 149, Foll; 6 C. 268; 17 A. 428, Dist. The absence of recitals in a document may also be used in evidence against a person not a party to a document. (*Mookerjee and Carnduff*, JJ.) IMRIT CHAMER *v.* SRIDHAR PANDEY. **17 C.W N. 108 = 13 I.C. 120 = 15 C L J. 7.**

———Ss. 9, 11, 21—*Scope of, not controlled by the Cr. P. Code.*

Ss. 9 and 11 read along with S. 21 of the Evidence Act amply justify a Court in admitting into evidence all previous statements made by the accused which have a bearing on the question of his guilt and whether the previous statement is made to a Police officer or to an

EVIDENCE ACT (I of 1872), S. 10.

officer or to a third party is immaterial if the statement is relevant to the fact in issue. These sections are not controlled by the Cr. P. Code. (*Mullick and Thornhill*, JJ.) MADAN GURU *v.* EMPEROR. **24 Cr. L J 723 = 73 I.C. 963 = 4 P L.T. 384.**

———Ss. 9 (c), 14 and 34—*Evidence of previous crime—Admissibility.*

Evidence of collateral offence cannot be received as substantive evidence of the offence on trial; but evidence may be given to prove the elements mentioned in S. 14 of the Evidence Act such as intention, etc. (*Mookerjee and Beachcroft*, JJ.) BAHARUDDIN MANDAL *v.* EMPEROR. **15 Cr. L.J. 43 = 22 I C. 187 = 18 C L.J. 578.**

———S. 10—*Forgery—Letter written by a third party to a stranger — Admissibility against accused—Proof of conspiracy.*

The accused was tried on a charge of forgery of a will and the prosecution tendered in evidence a letter which purported that it is written by a person who had no hand in the forgery to his brother. The writer of the letter not being examined still the letter was admitted in evidence. *Held*, that the letter was not admissible in evidence in the absence of proof that its writer was a party to a conspiracy to forge the will. (*Scott*, C J. *and Shah*, J.) EMPEROR *v.* KESHAV NARAYAN.
25 Bom. L.R. 248.

———Ss. 10 and 34—*Conspiracy — Gambling and cocaine cases prior to conspiracy charged—Admissibility of.*

Evidence showing that some of the accused ran cocaine and gambling dens, before existence of the conspiracy charged, was held admissible, the prosecution case being that some of the accused were a first thrown together by frequenting or running such dens and that they continued to meet such places for the purposes of the conspiracy charged. The evidence of an Excise Inspector of raids on the dens was admissible as leading up to the admissions made to him. (*Teunon and Cuming*, JJ.) SITAL SINGH *v.* EMPEROR.
46 Cal. 710 = 54 I.C. 53 = 21 Cr. L J. 5 = 30 C.L.J. 265.

———S. 10—*Conspiracy—Proof of.*

Possession of seditious literature by one member is evidence against the others for finding out the object of the association, even where such possession was obtained or such essays written before the association was formed or before other members joined the association. (*Sanderson*, C.J. *and Batchelor*, J.) MONINDRA MOHAN *v.* EMPEROR. **43 Cal 215 = 28 C L.J 25 = 46 I C. 152 = 19 Cr. L J. 696 = 23 C W.N. 193.**

———S. 10—*Signature in note books.*

Note books of *Jamakharch*, wherein the accused has signed his name, are admissible to

EVIDENCE ACT (I of 1872), S. 10.

prove abetment of conspiracy. (*Holmwood and Mullik*, JJ.) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* MAN MOHAN ROY. 17 Cr. L.J. 4 9= 35 I.C. 999 = 20 C.W.N. 292.

——S. 10—*Conspiracy—Evidence of.*

Whenever evidence is sought to be let in under S. 10, the accused is entitled to insist on strict compliance with its provisions namely proof of reasonable ground for belief that the persons named have conspired together. On a charge of conspiracy, particular facts are proved to show that one or more of the accused took part in it, after general evidence of the existence of conspiracy is first given. (*Mookerjee and Richardson*, JJ.) AMRITALALA *v.* EMPEROR. 42 Cal 957 = 19 C W.N 676 = 16 Cr L J. 497 = 29 I C. 5 3 = 21 C.L.J. 331.

——S. 10—*Scope of English and Indian Law.*

S. 10 of the Evidence Act is wider than the English law. As soon as it is shown with regard to an individual conspirator, that he was in privy with the combination and its objects and adopted the acts already performed, he as a conspirator becomes bound by the antecedent and the consequent acts of his fellow conspirators. There is a considerable inconsistency between S. 10 of the Evidence Act and the illustration thereto. It is not necessary to establish by direct evidence that the accused persons did enter into an agreement to commit an offence to attract the operation of S. 10 of the Evidence Act, against the acoused. The finding of closed covers relating the conspiracy in possession of one of the conspirators is relevant against the other under S. 10. (*Johnstone and Rattigan*, JJ.) BALMOKAND *v.* CROWN 246 P.L R. 1915 = 17 P.R. Cr. 1915 = 28 I C. 738 = 16 Cr. L J. 354 = 11 P.W.R. Cr. 1915.

——Ss. 11, 14 and 15—*Facts disclosing similar transaction, admissibility.*

Where the accused were charged with having cheated the complainants by receiving the money for them under the pretext that they were the agents of a rich lady anxious to lend money at low rates and that they would get for the complainants a loan from her at an extremely low rate of interest evidence to the effect that at or about the same time they were making precisely the same representation to third persons is admissible under Ss. 11 and 14 to corroborate the story of the prosecution and to prove the intention of the accused. (*Piggott and Walsh*, JJ.) EMPEROR *v.* YAKUB ALI. 39 All. 273 = 39 I C 673 = 18 Cr. L J. 529 = 15 A L.J. 241.

——Ss. 11, 32 and 33—*Statements of deceased persons—Admissibility—Evidence.*

If a statement of a relevant fact made by a deceased person is inadmissible under Ss. 32 and 33, it will not be admissible under S. 11.

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S. 11 must be read subject to other sections of the Evidence Act. (*Richards*, C.J. *and Banerji*, J.) BELA RANI *v.* MAHABIR SINGH. 34 All. 341 = 14 I.C. 116 = 9 A.L.J. 351.

——Ss 11 and 41—*Judgment—Recitals—Admissibility of—Family custom.*

Though the recitals in a judgment cannot be used as evidence, still the judgment is evidence as a relevant fact in issue or as a transaction. Evidence adduced to prove the custom prevailing in connected families may be admissible to prove the custom in the family in question in a suit. 29 C. 343, Ref. to. (*Mookerjee and Cuming*, JJ.) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. 50 Cal 370 = 37 C L J. 233 = 1923 Cal. 485.

——Ss. 11, 13 and 32 (3)—*Recital of boundaries—Admissibility in evidence.*

Recitals of boundaries in documents between third parties are not admissible in evidence under Ss. 11 and 13 of the Evidence Act but they might be admitted under S. 32 (3) when they are the statements made by persons of that character described in the opening words of that section; that is to say, persons who are dead or who cannot be found or for other reasons there stated cannot be examined as witnesses. 35 C.L.J. 19; 14 C L.J. 467; 15 C L.J. 7, Ref. (*Newbould*, J.) ABDUL RAHIM KAZI *v.* JONABALI SIKDAR. 1923 Cal. 299.

——S. 11—*Recitals in documents.*

Where a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence, but the recitals are not evidence especially if they are mere assertions by a person who is alive and who might have been brought before the Court as a witness. (*Mookerjee and Chotzner*, JJ.) NIHAR BEWA *v.* KADER BAKSH. 1923 Cal. 290.

——Ss. 11 and 13—*Landlord and tenant—Evidence of relationship*—Ex parte *decrees.*

Ex parte decrees for rent obtained by a landlord against the heirs of a tenant and satisfied by the latter are evidence of the existence of the tenancy at the date of those decrees. (*Greaves and Panton*, JJ.) ANUKUL CHANDRA DHAR *v.* KAMALA KANTA ROY. 1923 Cal. 270.

——S. 11—*Statement of wounded person on the day of occurrence.*

Accused was charged with having caused grievous hurt to one of his wives and having killed another. The wounded woman on the day of the occurrence, on her arrival in Hospital made a statement to a Magistrate to the effect that it was the accused who had attacked herself and her co-wife. *Held*, S. 11 of the Evidence Act does not justify the admission of the contents of the statements. (*Walmsley and Huda*, JJ.) EMPEROR *v.* ABDUL SHEIKH. 21 Cr L.J. 183 = 54 I.C. 887 = 24 C.W.N. 933.

EVIDENCE ACT (I of 1872), S. 11.

——Ss. 11 and 13—*Recitals in deeds—Admissibility of.*

A recital in a *kabuliyat* by a tenant that his landlord is in possession of a piece of land may not be sufficient evidence of the latter's possession unless the executant of the *kabuliyat* is examined in Court. (*Teunon and Newbould*, JJ.) RAKHAL CHANDRA GHOSE *v.* MOHENDRA NARAIN SEN. **51 I C. 797.**

——S. 11—*Letter written by accused—Admissibility in evidence—Conditions.*

A letter written by the accused where it is self-condemnatory is *prima facie* evidence against him and is admissible in evidence; that the letter should have been signed by the accused is not necessary; it is enough if it can be traced to the writer; its admissibility is not affected by the fact that it was intercepted or surreptitiously detained and opened. (*Mookerjee and Beachcroft*, JJ.) BOOTH *v* EMPEROR.
41 Cal 545 = 18 C.L.J. 567 = 22 I.C. 179 = 15 Cr. L J. 35 = 18 C.W.N. 886.

——S. 11—*Terms of grant—Evidence as to other grants by same person.*

Where the question is as to the terms of a grant made by A to B, whether it may be subject to a condition or not, evidence of other grants by A to others with the condition is inadmissible. Even if admissible its weight is small. (*Jenkins*, C.J., *Harrington and Mookerjee*, JJ.) BHAGWAT BUKSH ROY *v.* SHEO PERSHAD SAHU. **18 C.L.J. 277 = 21 I.C. 481 = 18 C.W.N. 287.**

——S. 11 and 13—*Nature of contract with some tenants, if evidence of nature of contract with others.*

The fact that A made a contract of tenancy with B on certain terms in respect of certain lands is no evidence of the nature of the contract of tenancy made by A with C in respect of different lands, except perhaps where all the lands are subject to the same custom or tenure. *Mookerjee and Beachcroft*, JJ.) KAMLESHWARI PERSHAD SINGH *v.* KAMANI SINGH.
17 C.W.N. 1159 = 20 I.C. 171 = 19 C.L.J. 348.

——S. 11—*Entry in hospital register, Admissibility of.*

An entry made in a register of in-door patients in hospital is admissible in evidence to prove that the person mentioned in the entry was in the hospital on a certain date. (*Chevis*, J.) AMOLAK RAM *v.* EMPEROR.
56 P.L.R. 1918 = 43 I C. 429 = 19 Cr. L.J. 141 = 13 P.W.R. Cr. 1918.

——Ss 11 and 32—*Ownership of stolen property—Statement of deceased.*

Statement of a person regarding the ownership of property alleged to be stolen as to what the deceased had said to him is inadmissible either under S. 11 or under S. 32. 34 A. 341, Foll. (*Oldfield and Seshagiri Iyer*, JJ.) DORAISWAMI IYER, *In re.* **30 I.C. 464 = 16 Cr. L.J. 640.**

EVIDENCE ACT (I of 1872), S. 11.

——S. 11—*Title—Proof of—Assertion by one party—Sketch.*

A sketch prepared by one of the parties at a time when the Government proposed to acquire those lands before there was any controvesy, is strong cogent evidence to prove ownership because it dates back to a period when this dispute had not arisen. (*Wallis*, C.J. *and Tyabji*, J). MANJERI KARNAMULPAD *v.* KOZHAIKOTE KIZHAKKE. **29 I.C. 729.**

——S. 11—*Document not* inter partes—*Admissibility.*

Document not *inter partes* which are admissible under S. 11, must relate to the existence of facts which make any fact relevant to the decision of the case, highly probable or improbable. (*Sadasiva Aiyar and Tyabji*, JJ.) VISVANATHA ROW *v.* CHINNAKOLANDAI NAINAR. **22 I C. 369 = 1 L.W. 197.**

——S. 11—*Highly probable—Scope of.*

The words 'highly probable' in S. 11 are of great importance inasmuch as the section makes only those facts admissible, which, assuming that they are admitted in evidence will be of great weight in bringing the Court to a conclusion one way or other regarding the facts in question. (*White and Tyabji*, JJ.) MESSRS. LOVELOCK AND LEWES *v.* THE MALABAR TIMBER AND SAW MILLS, LD.
18 I.C. 997 = 13 M.L.T. 282.

——S. 11—*Relevancy of judgment—Civil suit.*

A judgment in a Civil suit is relevant under S. 11. (*Benson*, O.C J, *Sankaran Nair and Sundara Iyer*, JJ.) MUNI REDDI *v* VENKATA ROW. **37 Mad 2 8 = 2 i M L J 447 = (1912) M.W N. 1029 = 17 I.C 544 = 13 Cr. L.J. 8.0 = 12 M.L T. 615.**

——Ss 11, 13 and 32 2)—*Deed—Recitals as to boundaries — Admissibility of — Persons parties to deed living.*

Documents between strangers containing recitals as to the boundaries and indirectly suggesting the ownership of the property in dispute are not admissible under S. 11 or 13 but are admissible under S. 32 (2) of that Act. 5 C.L.J 55; 14 C.L.J. 167; (1910) M.W.N. 664; 19 C W N 468, Ref. (*Prideaux*, A.J.C.) TRIMBAK *v.* GANESH. **1923 Nag. 22.**

——S. 11—*Police report—Value of.*

Where the lessee sets up forcible re-entry by the lessor, the fact that a report complaining of the use of force or criminal intimidation was made to the police soon after the occurrence, is a relevant fact under S. 11 of the Evidence Act and admissible in evidence. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) HABIB ULLAH SHAH *v.* BAKHT BALI SINGH. **30 I C. 292 = 2 O L.J. 299.**

——Ss. 11 (2), 21 (3) and 32 5—*Issue as to date of death of A—Document by A's son reciting A's death relevant.*

Where the question to be decided was as to when A died, a mortgage executed by his son in

EVIDENCE ACT (I of 1872), S. 11.

which the father is described as dead is admissible. (*Mukerjee and Rankin*, JJ.) SAYERUDDIN AKONDA *v.* SAMIRUDDIN AKONDA.
1923 Cal. 378.

———**Ss. 11 (b) and 13**—*Recitals in documents.*

Documents not *inter partes*, containing recitals as to a fact in issue are admissible under S. 11 (*b*) or S. 13 of the Act. 5 C.L.J. 55, Foll. 19 I.C. 615, Not Foll). (*Shadi Lal and Wilberforce*, JJ.) FARZAND ALI *v.* ZAFAR ALI. **46 I.C. 119=132 P.W.R. 1918.**

———**S. 13.**

ACTS AND CONDUCT.
DOCUMENTS.
INSTANCES OF CUSTOM.
JUDGMENTS.
MAPS.
WRITTEN STATEMENTS.

Acts and Conduct.

———**S. 13**—*Acts and conduct—Transaction between two persons—Rights of third person—Whether transaction admissible against third.*

A private transaction between persons, having no power to bind the person sought to be affected, is no evidence against him under S. 13. 5 C.L.J. 55, Diss. from (*H. Stephen and Mullick*, JJ.) ABDUL ALI *v.* SYED REAJAN ALI. **21 I.C. 618=19 C.W.N. 468.**

———**S. 13 (a)**—*Acts and conduct—Right to well—Transactions by party—Evidence of title.*

The ownership in a well may vest in different persons though it might stand on property belonging to one of them. Transactions by a party, dealing with the property to which he lays a claim are important evidence of his title; and sometimes, they constitute the only evidence of title available. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) RAMA IYENGAR *v.* KASINIVENDA IYENGAR. **16 I.C. 746=23 M.L.J. 327.**

———**Ss. 13 and 50**—*Acts and conduct—Mutation application—Legitimacy.*

When the question is whether a certain person is a legitimately born son, application for mutation with regard to revenue-paying properties would be admissible under Ss. 13 and 50, Evidence Act, as assertions of his right as a legitimate son. So also a judgment relating to a transaction in which he set up a claim as legitimate son would be relevant under S. 13. (*Simpson*, J.C. *and Dalal*, A.J.C.) GALSTAUN *v.* MIRZA ABID HUSSAIN. **10 O.L.J. 263=9 O. & A.L.R. 282=1924 Oudh 19.**

Documents.

———**Ss. 13 and 32 (b)**—*Documents—Sale-deed—Thirty years old showing ownership of adjoining land.*

sale-deed more than 30 years old in regard to a certain plot of land is admissible in

EVIDENCE ACT (I of 1872), S. 13—Documents.

evidence under Ss. 13 and 32 (*b*) of the Act, when a question of title to that land is in dispute. (*Chamier*, J.) NATWAR *v.* ALKHU.
18 I.C. 752=11 A.L.J. 139.

———**S. 13**—*Documents—Recitals in.*

Where a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence, but the recitals are not evidence, especially if they are mere assertions by a person who is alive and who might have been brought before the Court as a witness. (*Mookerjee and Chotzner*, JJ.) NEHAR BEWA *v.* KADOR BAKSH.
68 I.C. 282.

———**S. 13**—*Documents—Sale-deeds—Assertion of right*

To prove his vendor's title and exclusive possession of a garden, plff. produced certain documents dealing with the garden in question by way of partition. *Held*, that the documents were title deeds and contained an assertion of title to and possession of the property in dispute on behalf of the predecessor in title of the plff. against the deft. and should not have been excluded from consideration on the question of possession. (*N. R. Chatterjee*, J.) SREEMATI NITYA KALI DUTT *v.* SARAT CHANDRA BOSE. **51 I.C. 866.**

———**S. 13**—*Documents*—Chittas, *Private—Admissibility of.*

Semble: Private *Chittas* however old are not admissible in evidence under S. 13. (*Fletcher and Newbould*, JJ.) NAFAR JOARDAR *v.* PRATIMA SUNDARI DASSYA. **41 I.C. 726.**

———**Ss. 13 (a) and 32 (7)**—*Documents—Will—Unprivileged wills—Inadmissible.*

Wills not admitted to probate are not admissible in evidence under Ss. 13 (*a*) and 32 (7) except on proof by an attesting witness that they are in accordance with S. 50 of the Indian Succession Act. (*Fletcher and Teunon*, JJ.) MOHESWAR PANDA *v.* SUNDAR NARAIN. **33 I.C. 342=22 C.L.J. 551.**

———**S. 13**—*Documents*—Kobala *admitting right of easement.*

A *Kobala* admitting the plff.'s right to an easement is relevant and admissible under S. 13 of the Act. (*Mullick and Walmsley*, JJ.) GIRISH CHANDRA *v.* KUNJA BEHARI KOWAR.
26 I.C. 781.

———**S. 13**—*Documents containing assertions of right—Whether evidence.*

Documents containing assertions of right of a tenure holder to hold a certain rental, are admissible under S. 13. (*Woodroffe and Mullick*, JJ.) DINAMANI CHAUDHURANI *v.* JAGAT CHANDRA BHATTA CHARJEE. **23 I.C. 773.**

———**S. 13**—*Documents—Admission in Road Cess return—Evidence.*

An entry in a Road Cess return in which a former proprietor of an estate admitted the

EVIDENCE ACT (I of 1872), S. 13—Documents.

existence of a Lakhiraj, although not binding on the auction-purchaser of the estate at a Revenue sale, is admissible under S. 13. (*Chapman and Mullick*, JJ.) MANMOHINI DASSI *v.* ADVAITA MAITI. **19 I.C. 548.**

———**Ss. 13 and 32 (7)** — *Documents — Assertion of title in mortgage-deed — Relevancy and admissibility.*

A mortgage-deed containing an assertion of title as owner by the mortgagor is relevant under S. 13 as evidence of the title asserted. Where the mortgagor is dead the recitals in the deed as to how he got title are also evidence under S. 32, cl. (7) as statement relating to a transaction mentioned in S. 13. (*Sadasiva Iyer and Spencer*, JJ.) NALLASIVA MUDALIAR *v.* RAVAN BIBI. **14 L W. 327 = 70 I.C. 389 = (1921) M.W.N 560.**

———**Ss. 13 and 35** —*Documents containing assertion of right.*

A document containing an assertion o certain rights though not a public document under S. 35 is admissible under S. 13. (*Wallis. Offg.* C.J. *and Seshagiri Aiyar*, J.) AMBALAVANA PANDARASANNADHI AVERGAL *v.* MINAKSHI SUNDARESWARA DEVASTANAM. **(1915) M.W N. 76 = 28 M L.J. 217 = 26 I.C. 841 = 17 M.L.T. 271.**

———**Ss. 13 and 32** — *Documents — Sale deeds—Transaction—Meaning of.*

The words 'transaction,' means a business or dealing carried on or transacted between two or more persons. Where certain properties were claimed as the property of a particular family, and (1) sale-deeds by widow asserting their husband's title to the properties, (2) written statements filed by them in certain suits and (3) recitals in sale-deed between third persons describing the properties as belonging to a particular family, were put in evidence, *held* per *Ayling*, J., that the documents mentioned in (1) were admissible as transactions within S. 13 (*a*) and that those mentioned in (2) and (3) are not admissible either under S. 13 (*a*) as a transaction or under S. 32 as an admission against interest. Per *Seshagiri Iyer*, J.—That all of them were inadmissible. 6 C. 171 P.C., Ref. (1910) M.W.N. 668, Foll. 23 B. 63, Diss. (*Ayling and Seshagiri Aiyar*, JJ.) SARIPATHI VENKATARAYAGOPALA RAJU *v.* FOTA NARASAYYA. **26 I.C 747 = (1914) M.W.N. 779.**

———**S. 13 (b)**—*Documents—Entries in*—Ikrari-i-malikhan-e-deh—*Dictated by landlord alone—How far admissible.*

Entries in *Ikrari malikhan-e-deh* recording a village custom as stated by the landlord are in the absence of fraud or error binding on persons affected thereby even though the entries were not prepared in the presence of or attested by such persons and they are admissible in

EVIDENCE ACT (I of 1872), S. 13—Instances of custom.

evidence to prove custom. (*Lindsay*, J.C.) SNAI PERSHAD *v.* BALAK RAM. **23 I.C. 962 = 1 O L.J. 78.**

———**S. 13**—*Documents—Not* inter-partes—*Admission of plaintiff's rights—Admissibility.*

In a suit in which the question was whether a certain land was the *man* land of the plaintiff or the *joti* of the defendant an *ekrarnama* addressed by a stranger to the plaintiff's ancestor describing the law as *man* is admissible under S. 13 of the Evidence Act as it is both a transaction in which the right was claimed and an instance in which the right was exercised. Case-law referred to. (*Coutts and Ross*, JJ.) SABRAN SHEIKH *v.* ODOY MAHTO.
(1923) Pat. 125 = 1 P. 375 = 3 P.L.T. 792 = 1922 P. 488.

Instances of Custom.

———**S. 13 (a)**—*Instances of custom—Pending suit—Custom—Omission to plead.*

The fact that a custom was not pleaded in litigations between members of the community where it might have been pleaded, is relevant evidence, and the question of its relevancy is not affected by the circumstances that some of those suits were still pending in Courts at the time of the trial. (*Sanderson*, C J., *Woodroffe and Mookerjee*, JJ.) MARIAM BIBEE *v.* SHAIKH MAHOMED IBRAHIM. **48 I C. 561 = 28 C.L.J. 306.**

———**S. 13**—*Instances of custom—Pre-emption in case of neighbouring* Mohallas.

The evidence of custom of pre-emption in the neighbourhood of a *Mohalla* may indicate the existence of the custom of pre-emption in that *Mohalla*. Unconnected instances are by no means worthless evidence of the existence of a right to pre-empt. (*Reid*, C.J.) MUHAMMAD HUSSAIN *v.* GHULAM MUHAMMAD.
78 P.R. 1911 = 138 P L.R. 1911 = 10 I.C. 240 = 241 P.W.R 1911.

———**S. 13**—*Instances of custom—Rights not enforced—Effect.*

The mere fact that rights, recognised by Courts, were not exercised for some years does not lead to inference of abandonment nor does it affect the rights themselves. (*Oldfield and Spencer*, JJ.) SUNDARAM IYER *v.* THEETHARAPPA MUDALIAR. **40 I.C. 159.**

———**S. 13**—*Instances of custom—Family custom—Proof of instances.*

The most cogent evidence of a custom is not the expression of opinion as to its existence but instances where the alleged custom has been acted upon and by proof, afforded by judicial or revenue records, or private accounts and receipts, that the custom has been enforced. (*Drake-Brockman and Prideaux*, A. J. Cs.) MUSSAMMAT ZUNKARI *v.* BUDHMAL.
57 I.C. 252.

EVIDENCE ACT (I of 1872), S. 13—Judgments —Criminal Court.

Judgments.

CRIMINAL COURT.
EXECUTION PROCEEDINGS.
INTER PARTES.
NOT INTER PARTES.
PREVIOUS JUDGMENTS.
REMARKS.
REVENUE COURT.
MISCELLANEOUS.

Judgments—Criminal Court.

———Ss. 13, 35 and 67—*Judgments—Criminal Court—Statements of claims in proceedings under—Cr.P.C., S. 145—Statements of claims in possessory orders inadmissible in proof of title.*

Recitals of the claims of parties in possessory orders under S. 145, Cr. P.C., are inadmissible to prove title under S. 13 of Evidence Act or otherwise. They come neither under S. 63 not being oral accounts by a witness of the contents of a document, nor under S. 35 as entries in public records. 29 C. 187, Ref. to; 9 C. 586, Dist.; 15 M. 378 Disapproved. (*Chatterjee and Newbould*, JJ.) RAM SUNDAR GOPE SIKDAR *v.* HARIBALA DHUBI. **37 I.C. 911.**

Judgments—Execution Proceedings.

———S. 13—*Judgments—Execution proceedings.*

In a suit for declaration of title to immoveable property records of execution proceedings by the plaintiff respecting the same property (as against tenant, etc.) are admissible under S. 13 of the Evidence Act. (*Maclean*, C.J. *and Banerji*, J.) JOGESH CHUNDER *v.* ROHIN KUMAR ROY CHOWDHURY. **34 I.C. 215 = 21 C.L.J. 65.**

Judgments—Inter Partes.

———S. 13—*Judgments*—Inter partes—*Effect of—Admissibility in evidence.*

A judgment in a prior suit relating to a different *Jama* but between the same parties is admissible in evidence, whether or not it constitutes *res judicata*. (*Suhrawardy and Cuming*, JJ.) SASIMUKHI CHOWDHURANI *v.* SARASWATI SENGUPTA. **65 I.C. 522.**

———S. 13—*Judgments*—Inter partes—*Proceedings under S. 145, Cr. P. C., whether relevant.*

The facts of a previous proceeding under S. 145, Cr.P.C, and the order passed thereon are relevant in a suit between the same parties for recovery of possession of land on declaration of title but the reasons for the order are not relevant. (*Fletcher and Newbould*, JJ.) BARODA PROSAD ROY CHOWDHURY *v.* MANMATH NATH MITRA. **41 I.C. 456.**

———S. 13—*Judgments*—Inter partes—*Tenant, decree against.*

Under S. 13 a decree (obtained by plff.'s predecessor or a stranger) showing that deft.'s tenants had a holding in the estate on a certain rental is admissible for showing that the defts. held a holding in that estate on that rental. (*Fletcher and Smither*, JJ.) BYOMKESH CHAKRABARTHY *v.* JAGDISSWARA ROY. **40 I C. 442 = 22 C.W.N. 304.**

EVIDENCE ACT (I of 1872), S. 13—Judgments —Not inter partes.

Judgments—Not Inter Partes.

———S. 13—*Judgments—Not* inter partes.

Judgments not *inter partes* are admissible in evidence to prove assertion of title. (*Chatterjee and Panton*, JJ.) MOHAQ ALI *v.* MAFIZUDDIN SARKAR **65 I.C. 699.**

———Ss. 13 and 41—*Judgments—Not* inter partes—*Findings in—Inadmissible in evidence.*

Findings arrived at in a judgment in a prior suit not *inter partes* should not be used against a person in a subsequent suit. (*Chatterjee and Panton*, JJ.) SATISH CHANDRA MUKERJEE *v.* JOYRAM ROY. **65 I.C. 525.**

———S. 13—*Judgments—Not* inter partes—*Assertion of rights—Evidence—Admissibility.*

A judgment not *inter partes*, but which relates to the subject-matter of a suit and evidences the assertion of a right in controversy is admissible under S. 13 of the Evidence Act. (*Buckland and Cuming*, JJ.) PARBATI MAJHI *v.* DIGPATI MAJHI. **64 I.C. 465.**

———Ss. 13 (a), 32 (1) and 43—*Judgments—Not* inter partes—*Recitals if evidence—Will—Statement by deceased testator as to title.*

Plffs. sued to recover possession of certain lands as *nisker brahmottor* and relied for their title on a recital of *brahmottor* title in their father's will and a recital in a judgment in a claim case, which was not *inter partes*. *Held*, that the recital in the will was not admissible under S. 32 (1) read with S. 13 (*a*) and that the recital in the judgment not *inter partes* was also not admissible. 23 C.L.J. 583, Ref. (*Chatterjee and Newbould*, JJ.) SATINDRA KUMAR CHAUDHURY *v.* KRISHNA KUMARI CHAUDHURANI. **36 I.C. 882.**

———S. 13—*Judgments—Not* inter partes—*When can be used as evidence—Use of recitals in judgment.*

A judgment not *inter partes* may be used in evidence in certain circumstances as a fact in issue, or as a relevant fact, or possibly as a transaction, but the recitals in the judgment cannot be used as evidence in a litigation between the parties. (*Mookerjee and Roe*, JJ.) BASI NATH *v.* JAGOT KISHORE ACHARJEE. **20 C.W.N. 643 = 35 I.C. 298 = 28 C.L.J. 583.**

———Ss. 13 and 19—*Judgments—Not* inter partes—*Admissibility in evidence for proving admission of deft.*

Proper method of proving admission is by producing copy of deft.'s deposition or by examining witness who had heard the evidence given in the former trial. A judgment in a prior suit not *inter partes* is inadmissible as

EVIDENCE ACT (I of 1872), S. 13—Judgments —Not inter partes.

evidence of an admission. (*Richardson and Mullick*, JJ.) DEBENDRA NATH HALDAR *v.* BISESHWAR HALDAR. **20 C.W.N. 648 = 30 I.C. 821 = 22 C.L.J. 270.**

——**S. 13**—*Judgments*—*Not* inter partes.

Judgments not *inter partes* are admissible as evidence of usage as instances where the right was claimed, denied, or recognised. 13 M. 361 ; 24 B. 591, Foll. (*Oldfield and Spencer*, JJ.) SUNDARAM IYER *v.* THEETHARAPPA MUDALIAR. **40 I.C. 159.**

——**S. 13**—*Judgments*—*Not* inter partes—*Admissibility in evidence.*

Where the issue is as to the title and ownership of certain property a judgment in a pre-emption suit obtained by the deft. against a third person on the strength of a deed of gift alleged to be the source of the defendant's title is admissible in evidence as an instance in which defendant's right under the gift was asserted and enforced. (*Daniels and Lyle*, A.J.Cs.) ANJUMAN-UN-NISA *v.* ASHIQ ALI. **8 O.L.J. 439 = 3 U.P.L.R. (J.C.) 65 = 1922 Oudh. 178.**

——**S. 13**—*Judgments*—*Not* inter partes—*Admissibility of.*

A judgment not *inter partes* in a previous suit is admissible in a subsequent suit to prove the fact that the judgment was passed. It is therefore necessarily evidence of the following further facts ; who the parties to the dispute were ; what the land in dispute was ; and who was declared entitled thereto. To this extent and no more the judgment is admissible against even third parties. 22 C. 523 ; 29 C. 187, Ref. (*Wazir Hasan*, A.J.C.) GHULAM SARWAR KHAN *v.* MAHOMED ALI KHAN. **8 O.L.J. 609 = 1922 Oudh 98.**

——**S. 13**—*Judgments*—*Not* inter partes.

The question was whether the appellant was a legitimate daughter of one K and R. A decree was passed in a suit between R and another by which R got only a small maintenance. *Held*, that the decree was admissible under S. 13 of Evidence Act. (*Piggott*, A.J.C.) PARBATI *v.* KAHARAJ SINGH. **10 I.C. 188**

——**S. 13**—*Judgments*—*Not* inter partes.

Under S. 13 judgments not between the parties to the suit pronounced by a Court of competent jurisdiction containing a declaration that the right in dispute has been asserted and recognised in a Court of law, are admissible in evidence. 12 C.W.N. 739, Foll. (*Chapman and Atkinson*, JJ.) MUHAMMAD EHIA *v.* GANGA DAYAL OJHA. **40 I.C. 838.**

Judgments—Previous Judgments.

——**Ss. 13 and 11**—*Judgments*—*Previous judgment contesting the right of* granthi—*Findings regarding the nature of property.*

Where in a suit contesting the right of the *granthi* of the *Darbar Sahib* (golden temple at Amritsar), to alienate a certain shop. It was

EVIDENCE ACT (I of 1872), S. 13—Judgments —Revenue Court.

held that the properties were *waqf* and attached to the *granthi* and could not be alienated by the *granthi*. The judgment only proves that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf* and was attached to the *granthi* is not relevant in a subsequent suit by the successor to the office challenging the alienation by his predecessor-in-title. (*Scott-Smith and A. Raoof*, JJ.) INDAR SINGH *v.* FATEH SINGH. **59 I.C. 734 = 1 Lah. 540.**

——**S. 13**—*Judgments — Previous judgments.*

Per *Wallis*, C. J.—The fact that the ancestor failed in a contested suit to prove the relationship of his line with the deceased fifty years ago when such an issue was much more susceptible of proof, is evidence against the existence of the right under S. 13. 30 M. 510 ; 31 B. 143, Foll. (*Wallis*, C. J. *and Seshagiri Iyer*, J.) THE SECY. OF STATE *v.* SUBRAYA KARANTHA. **18 M.L.T. 504 = (1916) M.W.N. 962 = 31 I.C. 590 = 2 L.W. 1175.**

——**S. 13** — *Judgments—Previous judgments.*

Judgments which are neither *res judicata* nor judgments *in rem*, are not admissible as showing that a particular right was asserted or denied. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MAHAMMAD ALI KHAN *v.* GHAZANPAR ALI-KHAN **60 I.C. 147 = 7 O.L.J. 474.**

Judgments—Remarks.

——**S. 13**—*Judgments — Remarks—Relevancy of—Judgment relating to land—Extrinsic evidence.*

A judgment is relevant under S. 13 only as an instance of assertion of a right. The remarks therein cannot be treated as evidence, they being mere opinions of one who is not cross-examined. A judgment describing land by metes and bounds is of no value unless explained by extrinsic evidence. (*Phillips*, J.) KANDAMMAL *v.* MUMAR RAJA. **10 M.L.T. 330 = 12 I.C. 423 = (1911) 2 M.W.N. 337.**

Judgments—Revenue Court.

——**S. 13**—*Judgments—Revenue Court—Strong evidence.*

The decision of a higher Revenue authority on the question of tenant's status, though not *res judicata* in a Civil Court carries great weight. It is not open to the Civil Court to ignore the finding of an appellate Revenue authority and accept that of a Subordinate Revenue officer, though the former was wrong and the latter right. (*Kensington and Shah-Din*, JJ.) ABDULLAH KHAN *v.* GHULAM JAN. **155 P.W.R. 1912 = 16 I.C. 886 = 186 P.L.R. 1912.**

EVIDENCE ACT (I of 1872), S. 13—Judgments—Revenue Court.

———S. 13—*Judgments—Revenue Court—Rent decree—Evidentiary value.*

A rent decree is to some extent evidence under S. 13 of the Evidence Act as to the landlord having recognised the holding as being in the possession of the tenant sued. It is not conclusive against third parties and does not stand on the same footing as the delivery of possession given by a Civil Court or a decree awarding possession by a Civil Court. 57 I.C. 95 ; 53 I.C. 829, Ref. (*Jwala Prasad*, J.) NAND KISHORE SAO *v.* BIKAN SINGH. **3 P.L.T. 570=23 Cr. L.J. 200=1922 P. 557.**

———S. 13—*Judgments—Revenue Court—Decisions under Ss.* 103 *and* 106 *of the B. T. Act—Admissibility.*

A decision in a case under S. 103 and a judgment in a case under S. 107, B. T. Act, regarding certain other tenants in the same village are relevant under S. 13 of the Evidence Act. (*Mullick and Sultan Ahmed*, JJ.) MAHA RANI JANKI KOER *v.* SAUDAGAR RAM. **1 P.L.T. 221=56 I.C. 417=(1920) Pat. 177.**

Judgments—Miscellaneous.

———S. 13—*Judgments—Proceedings in suit—Suit for possession—Relevant.*

Where the defts. in a suit for possession allege a prior lease granted to them by the plff.'s lessors, the proceedings of a suit for rent by such lessor together with maps, etc., are relevant, though defts. were no parties to that suit. (*Teunon and Choudhuri*, JJ.) MADAN CHANDRA PAL *v.* KITIRAM BISWAS. **34 I.C. 163=23 C.L.J. 578.**

———S. 13 (b)—*Judgments—Decision as to minority.*

A judgment holding a person to be a minor is inadmissible under S. 13 (*b*). (*Coutts-Trotter and Srinivasa Aiyengar*, JJ.) VENKATA RANGAPPA *v.* SUBRAYA GOUNDAN. **33 I.C. 142.**

Maps.

———S. 13—*Map prepared by private party before suit.*

A map prepared by a private party long before the filing of a suit for declaration of title is not admissible in evidence under S. 13 of the Evidence Act, unless it is proved that it was a transaction by which a right was recognised or asserted. (*Sanderson*, C. J. *and Panton*, J.) SHASHI BHUSAN DHAR *v.* NAWAB OF MURSHTDABAD. **49 I.C. 951.**

———Ss. 13 and 36—*Maps*—Thak *map—Entries if evidence against both proprietors and tenants.*

The entries in *thak* map and its explanatory field book, are evidence under S. 13, both against proprietors as well as tenants. (*Coxe and Chatterjee*, JJ.) DOWLAT RAI *v.* KHUB LAL SINGH. **22 I.C. 646.**

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———Ss. 13 and 83—*Maps—Map of* Khas Mehal *lands—Admissibility.*

A map prepared under the directions of the Govt. as landlord, of *khas mehal* lands is admissible under S. 13 though not as a public record under S. 83. (*Jenkins*, C. J. *and Chatterjee*, J.) UPENDRA NATH *v.* CHAIRMAN OF THE CALCUTTA CORPORATION. **13 I.C. 332=16 C.W.N. 116.**

———S. 13—*Maps—Batwara Khasra map—Admissibility of.*

A Batwara Khasra map prepared in pursuance of a partition under the partition of Estate Act (VIII of 1876), by the Collector, was a document of title and admissible in evidence under the section. (*Atkinson*, J.) AJODHYA PRASAD SINGH *v.* KAMAL NARAIN SINGH. **38 I.C. 491.**

Written Statements.

———S. 13—*Written statements.*

The written statement of a Hindu widow in answer to a suit for partition against herself and other members of her husband's family as to how she treated a particular piece of property claimed as partible is relevant under S. 13. (*Trotter and Moore*, JJ.) RANGASWAMI PILLAI *v.* VAIDILINGA MUDALIAR. **33 I.C. 446.**

———Ss. 14 and 15—*Licensed clerk—Acts and conduct.*

Where a licensed clerk was charged with cheating by collecting 2 annas more than due, from each licensee, evidence of action with others is not admissible under S. 14 or 15 of Evidence Act. (*Tudball*, J.) EMPEROR *v.* ABDUL WAHAD. **34 All. 93=8 A.L.J. 1269=12 I.C. 987=12 Cr. L.J. 611.**

———Ss. 14 and 54—*Evidence of previous offences.*

In a case where the accused are tried for being members of a gang of dacoits and simple theft or bad livelihood in which the order for giving security is based on evidence merely that the accused habitually commits theft (as opposed to dacoity and possibly robbery) it is not evidence indicating an intention to commit the particular crime of which the accused is charged. It at most merely indicates a disposition to commit crimes of a similar class. It is doubtful whether dacoity may not be put in a higher class than theft. (*Fawcett*, J.) EMPEROR *v.* HAJI SHER MUHOMED. **25 Bom. L.R. 214=24 Cr. L.J. 867 and 870=1923 Bom. 65 and 71.**

———Ss. 14, 15—*Defamation—Suit for—Defence of truth.*

In a suit on libel, evidence of instances of plaintiff's acts more or less resembling the particular act of misconduct imputed to him in the libellous statement is inadmissible unless

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those acts were parts of the habitual and intentional and not accidental conduct of the plaintiff. (*Scott*, C.J. *and Chandavarkar*, J.) NADIRSHAW HORMUSJI *v* PIROJSHAW RATANJI. **19 I.C. 98=15 Bom. L.R. 130.**

——Ss. 14 and 15—*Evidence of association and joint action—Admissibility of—Murder and robbery.*

On a charge against two persons of murder and conspiracy to rob the victim and for abetment of the offences, the prosecution adduced evidence of their association in connection with other charges of theft in the town, that they used to go about together, under different names, the one taking the other as his durwan and introducing himself as a rich landlord to several rich women who subsequently lost ornaments and cash which were gradually recovered. *Held* that the evidence was improperly admitted. (Per *Mookerjee*, J.) S. 15, Evidence Act is not applicable as there was no question of the act being accidental or intentional or forming part of a series of similar transactions. S. 14 of the Act did not also apply as the defence was a complete denial and no question of the character contemplated in S. 14 did or could possibly arise. (*Sanderson* C.J., *Mookerjee*, *Fletcher*, *Chaudhuri and Walmsley*, JJ.) EMPEROR *v.* PANCHU DAS. **47 Cal. 671=24 C.W.N. 801=58 I.C. 929=21 Cr. L.J. 849=31 C.L.J. 402 (F.B.)**

——Ss. 14 and 15—*Previous acts—Suits—Facts relating to similar circumstances—Admissibility.*

In a prosecution under S. 209, I.P.C., evidence relating to other suits by the accused against other persons, may be admissible under Ss. 14 and 15 of the Evidence Act, to show the *animus* of the accused, and a systematic course of fraud and to rebut the plea of good faith or mistake. But evidence relating to similar suits by other persons is not admissible, unless those suits form part of the same transaction or the result of a conspiracy between them. (*Richardson and Beachcroft*, JJ.) RAGHU NATH LAL *v.* EMPEROR. **17 Cr. L.J. 776=46 I.C. 696=22 C.W.N. 494.**

——Ss. 14 and 15—*Previous forgeries.*

Series of similar acts involving forgery is evidence of intention but not forgery itself. (*Holmwood and Mullick*, JJ.) KRISHNA GOVIND PAL *v.* EMPEROR. **43 Cal. 783=17 Cr. L.J. 130=33 I.C. 306=20 C.W.N. 262.**

——Ss. 14 and 15—*Previous offences—Evidence of other dacoities, if admissible.*

In a charge of dacoity, evidence of other dacoities committed by the accused is inadmissible either under S. 14 or S. 15 of the Evidence Act. (*Sundara Aiyar and Spencer*, JJ.) MANDI GHASI *v.* EMPEROR. **13 Cr. L.J. 125=13 I.C. 781=(1912) M.W.N. 49.**

——Ss. 14 and 15—*Murder by poison—Evidence of other acts.*

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In a case of murder by administering sweetmeats, the fact that the accused offered sweetmeats to boys and thus poisoned one of them is not evidence under S. 14, Evidence Act, but it would be relevant under S. 15 to show that the administration was intentional and not accidental. (*Batten*, J.C. *and Hallifax*, A.J.C.) KASHIRAM *v.* EMPEROR. **6 N.L.J. 144=24 Cr. L.J. 566=1923 Nag. 248.**

——Ss. 14 and 15—*Relation of S. 14 and S. 15—Opinions of Judges.*

S. 15 is subject to S. 14 as regards evidence of knowledge and intention. Evidence of the opinions of the other Judges on other documents written or attested by the accused in proceedings to which he is not a party is not admissible to prove his intention or knowledge, in his trial for giving false evidence in respect of an alleged forged document. (*Stanyon*, A.J.C.) GUNWANT *v.* EMPEROR. **38 I.C. 723=18 Cr. L.J. 339=13 N.L.R. 35.**

——S. 14, Illus. (a) and (b)—*Counterfeit coins and instruments found in the house of accused in two districts—Trial in one district—Evidence is admissible.*

In a trial of a person under Ss. 235 and 243 of the Penal Code for being in possession of counterfeit coins and instruments and materials for counterfeiting in his house in the district where he is tried, evidence of such possession in his house in another district is admissible under S. 14, Illus. (*a*) and (*b*) of the Evidence Act. (*Miller*, C.J. *and Adami*, J.) MISIRI GOSAIN *v.* EMPEROR. **22 Cr. L.J. 407=61 I.C. 647=3 U.P.L.R. (P.) 50.**

——S. 14, Illus. (a)—*Theft—Stolen cattle—Possession of.*

In Sind, possession of stolen cattle three or four months after theft is sufficient to raise presumption of guilt under the section; but the accused may set up title by lawful origin to rebut the presumption. (*Hayward*, J.C. *and Crouch*, A.J.C.) EMPEROR *v.* SUMAR JURIO. **18 Cr. L.J. 411=38 I.C. 971=10 S.L.R. 167.**

——S. 15—*Scope of—Accidental or intentional.*

Per *Walsh*, J.:—S. 15 of the Evidence Act is applicable to all cases where the question is whether an untruthful statement is "accidental or intentional or made with particular knowledge or intention." (*Piggott and Walsh*, JJ.) EMPEROR *v.* YAKUB ALI. **39 All. 273=39 I.C. 673=18 Cr. L.J. 529=15 A.L.J. 245.**

——S. 15—*Subsequent occurrences.*

S. 15 covers both previous and subsequent similar occurrences. (*Richardson and Beachcroft*, JJ.) RAGHU NATH LAL *v.* EMPEROR. **19 Cr. L.J. 776=46 I.C. 696=22 C.W.N. 494.**

——S. 15—*Evidence of similar acts—Conspiracy.*

Evidence of similar facts may be received to prove a party's knowledge of the nature of the

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main fact or transaction of his intent with respect thereto. To admit evidence under this head, the other acts must be of the same specific kind as the one in question and not of a different character. The acts tendered must also have been proximate in point of time to that in question. (*Mookerjee and Richardson*, JJ.) AMRITLAL HAZRA *v.* EMPEROR.
19 C.W.N. 676 = 42 Cal. 957 = 29 I.C. 513 = 16 Cr. L.J. 497 = 21 C.L.J. 331.

——S. 15—*Intention—Series of acts.*

Where *Dhatura* poison was administered by accused to A and B both of whom died from the effects thereof, and on the following day the accused administered the same poison to D., who also died, the acts against A. and B. are relevant to a case of murder of D. as forming incidents in a series of similar transactions occurring about the same time and tending to show system and intention. (*Reid*, C. J. *and Rattigan* J.) LALA *v.* EMPEROR. 12 Cr. L.J. 125 = 9 I.C. 731 = 32 P.L.R. 1911.

——Ss. 15 and 14—*Facts showing intention.*

S. 15 must be read subject to S. 14 so far as evidence of knowledge and intention is concerned. (*Stanyon*, A.J.C.) GUNWANT *v.* EMPEROR. 18 Cr. L.J. 339 = 38 I.C. 723 = 13 N.L.R. 35.

——S. 16—*Motive or preparation—Dacoity—Previous armed raids.*

Where the accused who were charged under S. 389, I.P.C., plead that their presence in company and armed at a spot was accidental and innocent, it is open to the prosecution to rebut this theory, and to produce evidence that in the same locality raids have taken place in which one of the gang had been concerned. In the case of actual dacoity the prosecution is bound to prove the accused's commission of all the acts which constitute the offence. S. 15 of the Evidence Act admits the production of any evidence which would determine the construction to be placed upon acts which in themselves might or might not be the preparation for dacoity and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible in evidence for the purpose. (*Pipon*, J.) KHWAJA HASSAN *v.* EMPEROR. 71 I.C. 360 = 24 Cr. L.J. 136

——S. 16—*Refusal of letter posted.*

A person refusing a letter posted to his address is affected with notice of its contents. (*Pratt and Fawcett*, JJ.) LOUIS DREYFUS & CO. *v.* CHIMANDAS VISHINDAS & CO.
50 I.C. 194 = 12 S.L.R. 142.

——Ss. 17 and 21—*Statement in a will not relevant.*

A statement in a will suggesting an inference as to a fact in issue, cannot be proved by or on behalf of the person who made it or his representative-in-interest. Even, where two executors, who were members of the family, acted upon the will, still the statement cannot be treated as an admission by the members of the family that the statement in the will is true. (*Sir Lawrence Jenkins*). NADAM PATTABHIRAMRAO *v.* MANDAVILLI NARAYANAMOORTY.
26 C.W.N. 273 = L.R. 3 P.C. 29 = 15 L.W. 404 = 1922 P.C. 102 (P.C.).

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——Ss. 17 and 23—*Admissions—Relevancy of.*

Relevancy of admissions must be determined with reference to Evidence Act. (*Lord Moulton*). SREEMUTHY MANOKARIM DEBI *v.* HIRAPADA MITTER. 24 I.C. 311 = 18 C.W.N. 718 (P.C.).

——S. 17—*Erroneous admission not binding.*

An erroneous admission does not bind the person making such admission. (*Banerji and Gokul Prasad*, JJ.) MANGRU RAI *v.* SHIVANAND LAL. 1923 All. 575.

——S. 17—*Admission by one of two brothers.*

The admission of the plaintiff's claim by one of two brothers does not bind the other. (*Tudball*, J.) MUSSAMMAT MAINA *v.* MADHO PRASAD. 24 I.C. 105.

——S. 17—*Admission by a predecessor in interest—Admissibility in evidence.*

A person made a gift of life interest to the plaintiff and while he had still a reversionary interest, he wrote a book containing a statement about the measure prevalent in the village. In a suit by the plaintiff after the reversionary interest had devolved on them, while deciding the question of measurement, involved in the suit, the Court held that the statement in the book was binding on the plaintiff. *Held*, that the statement was admissible in evidence against the plaintiff inasmuch as it was an admission of his predecessor in interest. (*Chatterjee and Suhrawardy*, JJ.) TARAMONI CHANDHURANI *v.* CHARN CHANDRA CHADUHURI. 64 I.C. 334.

——S. 17—*Deposition in former suit can be used as admission.*

The deposition of a witness in a former suit is admissible as an admission in a subsequent suit in which such witness is a defendant and may be relied upon by the Court as a piece of evidence. (*N.R. Chatterjea and Pearson*, JJ.) ALI MAHAMMAD KHAN *v.* MAHARAJ BEHARI.
64 I.C. 266 = 36 C.L.J. 186.

——Ss. 17 to 21—*Admission of party as to joint possession, can be given in evidence against others.*

An admisson by one party may be given in evidence against another, against whom the admission is sought to be used, when that person has a joint interest with the party making the admission in the thing to which the admission relates. (*Newbould and Ghose*, JJ.) NAGENDRA NATH GHOSE *v.* LAWRENCE JUTE COMPANY. 61 I.C. 544 = 25 C.W.N. 89.

EVIDENCE ACT (I of 1872), S. 17.

———S. 17—*Admissions in prior proceedings.*

In a criminal trial of an insolvent, his admissions in other proceedings in insolvency are relevant if admissible under Ss. 18 to 31. (*Woodroffe and Walmsley*, JJ). PERRY *v.* OFFICIAL ASSIGNEE OF CALCUTTA.

47 Cal. 254=31 C.L.J. 209=56 I.C. 778=22 Cr. L.J. 522=24 C.W.N. 425.

———Ss. 17 and 44—*Admissibility of evidence and admissions.*

Where the plaintiff sues upon a title and adduces some evidence of it, he can avail himself of the defendant's admissions and need not positively prove his title *Mulki* papers containing statements made by plaintiff's predecessor when there was no dispute against his own interest, are admissible. (*Holmwood and Chatterjee*, JJ). KALI SANKAR SAHAI *v.* PRATAP UDAI NATH SAHI DEO.

15 I.C. 691=16 C.W.N. 683.

———S. 17—*Admissions—When binding.*

An admisson made without knowledge of the circumstances is not binding. (*Woodroffe and Carnduff*, JJ.) SIBU SANT *v.* NETAN CHARAN DAS. 9 I.C. 806=15 C.L.J. 114.

———Ss. 17 and 32—*First information report by accused—Admissibility.*

Though a first information report is valuable corroborative evidence it cannot support a conviction, when the maker of the report himself is an accused person and cannot therefore be examined as a witness. But where such a report contains an admission not amounting to a confession, the admission is admissible in evidence against the accused. (*Shadi Lal*, C.J. *and Abdul Qadir*, J.) KAKU *v.* EMPEROR. 63 I.C. 822=22 Cr. L.J. 694.

———S. 17—*Admission—Effect of.*

A fact admitted by a party to be true must be taken to be established until the contrary is proved. (*Petman*, J.) VIRSING *v.* HARNAM SINGH. 56 I.C. 191=1 Lah. 137.

———S. 17—*Admission of adoption.*

Admission by widow of her adopting her daughter's son is of little value. (*Johnstone*, C.J.) ARJAN SINGH *v.* DARBARA SINGH.

193 P.L.R. 1915=32 I.C. 312=140 P.W.R. 1915.

———Ss. 17 and 21—*Admission by a party—Whether binds stranger.*

A recital of payment of consideration in a mortgage document is an admission by the mortgagor within the meaning of Ss. 17 and 21 and may be proved not only as against the person who makes it, but also his representative in interest. (*Ayling and Tyabji*, JJ.) GADIAN CHETTI *v.* VEERAPPA CHETTY.

26 I.C. 899=28 M.L.J. 92.

EVIDENCE ACT (I of 1872), S. 17.

———S. 17—*Admissions under inducement.*

If the maker of the admissions contradicts before and retracts afterwards alleging that he had been induced to make them, they do not justify the passing of a decree on the basis of those admissions. (*White*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLAICHAMI THEVAN. 37 Mad. 38=21 M.L.J. 1077=10 M.L.T. 385=12 I.C. 568=(1911) 2 M.W.N. 461.

———S. 17—*Admissions under a mistake or imperfect knowledge—Value of.*

Statements made by a party at a previous proceeding without any definite knowledge of his rights and liabilities do not operate as an estoppel. Where the previous proceedings were compromised at an early stage without any decision of Court, the party can show in a subsequent suit that the statement previously made was untrue. (*Dhobley*, A.J.C.) MAHOMED YUSUF *v.* PIR MAHOMED.

1922 Nag. 67.

———S. 17—*Admission—Effect.*

Admission though not conclusive, shifts the burden of proof. (*Skinner*, A.J.C.) SAKHA RAM *v.* SHRI RAM.

10 I.C. 700=7 N.L.R. 23.

———S. 17—*Admissions—Evidentiary value of.*

What a party to a litigation has admitted to be true may be presumed to be true and until he rebuts it, the Court will take it as established. 29 A. 184, Ref. (*Wazir Hasan*, A.J.C.) GHULAM SARWAR KHAN *v.* MAHOMED ALI KHAN. 8 O.L.J. 603=1922 Oudh 98.

———S. 17—*Admissions—Evidentiary value of.*

Admissions are always evidence against the party who makes them but they are evidence which varies very much in value according to the circumstances and a Court is quite at liberty to reject them if it is satisfied from other circumstances that they were untrue. (*Daniels*, J.C.) GOKUL PRASAD *v.* KAILASH NATH. 4 U.P.L.R. (O.C.) 19=8 O.L.J. 596=1922 Oudh 55.

———Ss. 17 and 35—*Road cess returns are admissible to prove relation of landlord and tenant.*

Road cess returns signed by landlords are admissible against him to prove the relation of landlord and tenant. (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. 68 I.C. 676.

———S. 17—*Admission—Statements in deed.*

Statements in a mortgage deed as to the interest of the father and son (the executants) are, as against a subsequent purchaser from the son, simple admissions which could be rebutted by evidence. (*Ormond and Parlett*, JJ.) MAHOMED IBRAHIM SAIB KHATEEB *v.* MAUNG BA GYAW. 24 I.C. 462=7 Bur. L.T. 69.

EVIDENCE ACT (I of 1872), S. 17.

———S. 17 — *Admissions in pleadings—Effect.*

In a suit to recover possession if sale to the deft. is admitted by plff. himself the latter need not prove the sale. (*Twomey*, J.) MAUNG PYA *v.* MAUNG O. ZA. **9 I.C. 770 = 4 Bur. L.T. 40.**

———S. 18.

ADMISSION BY PLEADER.
PERSONS JOINTLY INTERESTED.
MISCELLANEOUS.

Admission by Pleader.

———S. 18—*Admission by pleader.*

An admission by a pleader based on an erroneous construction of an enactment amounts to a mistake of law and does not bind his client. (*Coxe*, J.) KRISHNA PROSAD *v.* UDIT NARAYAN SINGH. **9 I.C. 621.**

———S. 18—*Admission by pleader.*

Statement made by a party or pleader on a certain point in a previous case is admissible to prove or disprove the point in a subsequent case. (*Kanhaiya Lal, and Kendall*, A.J.Cs.) SURAJ BAKSH *v.* CHHAB KUAR. **25 I.C. 98 = 1 O.L.J. 532.**

———S 18—*Admission by pleader.*

A party is not bound by the statement or admission made by his *Muktear* unless it is shown to have been made within the scope of the authority conferred by the Mukhtearnamah. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. **1923 P. 37.**

Persons jointly interested.

———S. 18—*Persons jointly interested—Admission by one of two defendants no evidence against others.*

An admission by a defendant in his written statement is no evidence against his co-defendants. (*Richards*, C.J. *and Banerjee*, J.) PURAN MAL *v.* TARIF. **30 I.C. 2 = 13 A.L.J. 1089.**

———S. 18 — *Persons jointly interested—Admission of co-party.*

An admission of one of the persons jointly interested in the subject of the suit is admissible against himself and the others, if the admission is about the subject-matter of the suit and is made by him in his character of a person jointly interested with the party against whom the evidence is given. *Blenkinsopp* v. *Blenkinsopp*, (1846) 78 P.R. 216, Rel. The admission of one co-plaintiff or co-defendant is not admissible against another simply because of his position as a co-party in the suit but because of some privity of title or of obligation which justifies the use of the admission of one against the other. (*Mookerjee and Beachcroft*, JJ.) AMBAR ALI *v.* LUTFE ALI. **43 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.**

EVIDENCE ACT (I of 1872), S. 18—Miscellaneous.

———S. 18—*Persons jointly interested—Co-defendants—Admission by one.*

An admission by one defendant will not bind another. (*Coxe and Chatterjee*, JJ.) HEYAT BAKHSH *v.* LACHMINIA. **22 I.C. 916.**

———S. 18—*Person jointly interested—Co-defendants—Admission by some when binding on others.*

Where there are several defendants jointly interested in a particular matter, an admission by some of them is relevant against all the defendants. 44 C. 130 ; 45 C. 159, Ref. (*Le-Rossignol and Martineau*, JJ.) BHIKKA MAL *v.* PURAN MAL. **1923 L. 123.**

———S. 18—*Persons jointly interested—Admissions of.*

Admissions of one of several persons jointly interested in the subject-matter of a suit are receivable against him and his fellows whether they jointly sue or are sued, if they relate to the subject-matter in dispute. (*Mitra*, A.J.C.) DILESHWAR RAM BRAHMAN *v.* NOHAR SINGH. **48 I.C. 193.**

Miscellaneous.

———S. 18—*Admissions—Pleadings.*

Where an admission is made subject to conditions it must be accepted *in toto* or not at all. There is no right to reject the condition and take the remainder. 39 B. 389 = 42 I.A. 103. (*Lord Dunedin.*) MOTABHOY MULLA *v.* MULSI HARIDAS. **39 Bom. 399 = 17 M.L.T. 402 = 28 M.L.J. 589 = 19 C.W.N. 713 = 13 A.L.J. 529 = 21 C.L.J. 507 = 17 Bom. L.R. 460 = 2 L.W. 524 = (1915) M.W.N. 522 = 29 I.C. 223 = 42 I.A. 103 (P.C.).**

——— Ss. 18 and 19—*Admission—Parties and privies.*

The admission of the receipt of consideration in a mortgage-deed is admissible in evidence against a purchaser by private treaty. 35 All. 194, referred to. (*Rafique*, J.) GAYA PRASAD *v.* CHOTTOO. **26 I.C. 68 = 12 A.L.J. 941.**

———S. 18—*Admission by joint owner.*

Admission by a joint owner is admissible against the co-owner only if made after the joint ownership came into existence. Identity in legal interest is absolutely necessary. (*Mookerjee and Beachcroft* JJ.) AMBAR ALI *v.* LUTFE ALI. **45 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.**

———S. 18—*Admission—When relevant.*

An admission to be relevant, it should be shown that the person who made it had an interest at the time of making it within S. 18. A kabuliyat being an act of ownership may be admissible as evidence of title. (*Jenkins*, C.J. *and Mookerjee*, J.) JOGESHWAR GORAIN *v.* AKHOY GHOSE. **22 I.C. 714 = 19 Cr. L.J. 1.**

EVIDENCE ACT (1 of 1872), S. 18—Miscellaneous.

———S. 18—*Statement in document between third parties—Not parties to the suit.*

A deed made between persons not parties to a suit and containing a statement as regards the property in suit is not evidence in the suit unless the maker is called to depose on oath. (*Harrington and Newbould*, JJ.) CHERAGH ALI PRODHANIA *v.* MOHEVI MOHAN BARDHAN. 19 I.C. 615.

———S 18—*Admission in a previous suit by a party not party to present suit is inadmissible.*

An admission in a previous suit in favour of plff. pre-emptor by another pre-emptor not party to present suit is not admissible in a suit between plff. and the present vendees. (*Campbell*, J.) AHMAD KHAN *v.* JAWAHAR SINGH. 1923 Lah. 16.

———S. 18—*Admissions before* Panchayat.

Evidence as to admissions and promises made by alleged thieves before a *Punchayat* is admissible without proof of the actual words used. (*Shah Din*, J.) BEJA *v.* EMPEROR. 13 P.R. 1914 Cr. = 16 Cr. L.J. 38 = 26 I.C. 625 = 223 P.L.R. 1915.

———S. 18 — *Creditor's admission after transfer of debt—Value of.*

An admission by a creditor after transfer of his debt as to the receipt of money by the creditor before transfer, is not binding on the transferee. (*Chevis*, J.) CHANDA SINGH *v.* WASAWA SINGH. 108 P.W.R. 1914 = 25 I.C. 144 = 202 P.L.R. 1914.

———S. 18—*Admissions to be taken as a whole.*

Where a suit is based upon a lost document, the loss of which however the plaintiff, was unable to prove, he cannot succeed on the mere admission by the defendant of execution of the same when it is followed by a plea of payment duly endorsed thereon. (*Johnstone*, J.) ATRA *v.* CHAJU. 12 I C. 246 = 49 P.W.R. 1911.

———S. 18—*Oral—Effect.*

An admission in a written agreement of the execution required registration but was not registered. It was obtained from a woman by misrepresentation. No value can be attached to it as evidence of such execution. (*Robertson*, J.) TOLAK NATH *v.* JAGNATH. 240 P.L.R. 1911 = 12 I.C. 51 = 117 P.W.R. 1911.

———S. 18—*Customary easement—Gramanatham—Rights in—If can be acquired by user on the part of villagers.*

Rights in gramanatham are customary easement and can be acquired by user on the part of the villagers. (*Ayling and Odgers*, JJ.) TALUK BOARD, DINDIGUL *v.* VENKATARAMA AIYAR. 45 M.L.J. 333 = 1924 Mad. 197.

EVIDENCE ACT (I of 1872), S. 18—Miscellaneous.

———S. 18—*Admissions—Mistake.*

A plaintiff is is not absolved from proving that an affidavit sworn to by him previously, was made under the circumstances mentioned therein, even though there is no explanation on the deft.'s side for the plff. having made such statements, if they are false. (*Wallis*, C. J. *and Seshagiri Iyer*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.

———S. 18—*Admissions—Ignorance of legal rights—Effect of.*

An admission by the deft. in favour of plff. in ignorance of his legal rights will not be binding upon him if the plff. as a matter of fact has no legal claim. (*Collins*, C. J. *and Parker*, J.) ALLAREDDI SUBBAMMA *v.* NALLAPAREDDI. 11 M.L.T. 124 = (1912) M.W.N. 178 = 13 I.C. 870 = 22 M L J. 260.

———S. 18—*Admission by predecessor-in-title.*

Statements made by persons from whom the parties to a suit have derived their interest are admissible as admissions only when the admissions are of a date prior to the date of their deriving interest. Statements made by persons in possession of property and qualifying or affecting their title thereto are receivable against the party claiming through them by title subsequent to the admission. (*Simpson* J.C. *and Dalal*, A.J.C.) GALSTAUN *v.* MIRZA ABID HUSSAIN 10 O.L.J. 263 = 9 O. & A.L.R. 282 = 1924 Oudh 19.

———S. 18—*Admissions—Value of—Compromise falling through.*

Parties are often willing to make admissions for the purpose of effecting a compromise to which it would be unfair to hold them if the compromise falls through. (*Daniels and Lyle*, A.J.C.) KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. 9 O.L.J. 262 = 1922 Oudh 231.

———S. 18—*Admission—Effect.*

Admissions against interest might be decisive against the person making them; but such admissions may be ignored where there are circumstances calculated to discount them. Evidence of statements made by a deceased testator or executant concerning the fact of execution or otherwise of the documents in dispute and also the state of mind of the executant and other circumstances attending the execution are admissible in evidence under the head of admissions. (*Piggott* J.C. *and Lindsay*, A.J.C.) MIR SYED HUSSAN *v.* TAIYABA BEGAM. 26 I.C. 547 = 1 O.L.J. 591.

———S. 18—*Suggestion is no admission.*

Where a so-called admission is merely a suggestion made in the course of a negotiation

EVIDENCE ACT (I of 1872), S. 18—Miscellaneou .

and is not even unconditional it is no admission at all. (*Coutts and Das*, JJ.) RAMPATI RAUT *v.* MAHANTH HANUMAN SARAN.
1 P.L.R. 235=(1923) Pat. 142=
1923 P. 303

——S. 18—*Admission must be taken as a whole.*

It is a well-established principle of law that if a plaintiff wishes to rest his case solely on the admission of a defendant with regard to a particular transaction he must accept the admission as to that transaction as a whole. It is not open to him to pick out such part of the admission as may be favourable to himself and to neglect the rest. The plaintiffs sued to redeem a mortgage. The defendant admitted the mortgage but pleaded that the mortgage amount was more than that alleged by the plaintiffs. *Held* that no burden lay on the defendants to prove the amount. (*Brown*, A.J.C.) MY SHWE MYIN *v.* MA NAING.
4 U.B.R. 114=1 Bur. L J. 248=
1923 Rang. 24.

——S. 18—*Admissions—Statement as to subject-matter of suit after cessation of interest.*

Statements made by a person regarding the subject-matter of a suit after his interest in it has ceased, cannot be used as admissions under S. 18. (*Maung Kin*, J.) MA SHWE YAT AUNGH *v.* MAUNG DA LI. 9 Bur. L.T 152=
33 I C. 888=9 L.B R. 27.

——S. 19—*Admissions—Recitals—Parties and privies.*

The recital of the consideration in a deed and the admission as to receipt of the consideration made before the registering officer, are evidence against the persons who claimed through the executant of the deed. (*Chamier*, J.) IBRAHIM *v.* RAMNARAIN. 16 I.C. 483=
10 A.L.J. 87.

——S. 19—*Admission—When amounts to estoppel—Evidence.*

The express or implied admissions of a party to a suit are strong evidence against him. But he may prove them to be untrue unless another person has been induced by them to alter his condition. 29 A. 184 P.C.; 29 A. 519 P.C., Rel, (*Batchelor and Rao*, JJ.) BALMUKUND KESURDAS *v.* BHAGWANDAS KESURDAS, 19 I.C. 401=15 Bom. L.R. 209.

——S. 19—*Admissions by successor-in-interest when bound by admissions of predecessor.*

An admission made by a person having a reversionary interest in the property at the time is evidence against another person claiming the reversionary interest under a title derived from the former. (*N.R. Chatterjea and Suhrawardy*, JJ.) SREEMUTY TARAMONI CHAUDHURANI *v.* CHARU CHANDRA CHAUDHURI. 64 I C. 334.

——S. 19—*Guardian's admissions—Court of Wards—Minor.*

EVIDENCE ACT (I of 1872), S. 19.

Guardians of a person of an infant, are not competent to bind the ward by an admission as to his proprietary rights. An admission by a Court of Wards, cannot bind or prejudice the infant proprietor. (*Mookerji and Beachcroft*, JJ.) BANWARILAL SINGH *v* DWARKNATH MISSIR. 52 I.C. 825=29 C L J. 577.

——S 19—*Admissions—Mere possession of document.*

For a document to amount to an admission it is not necessary that it should have been written by the person against whom it is sought to be used. Mere possession of the document does not, by itself, count for much. It is sufficient if it be proved that the document has been in his possession and that his conduct in reference to it, is such as to create an inference that he was aware of its contents or admitted its accuracy. (*Caspersz and Sharfuddin*, JJ.) LALIT CHANDRA *v.* EMPEROR.
13 Cr. L J. 438=15 I.C. 65=39 Cal. 119.

——S. 19—*Admissions—Value of.*

An admission by a party to the suit on solemn affirmation is very strong evidence against him so as to shift the burden of disproving the facts admitted on to his shoulders. 29 C. 187 P.C., Fol. (*Scott Smith and Broadway*, JJ.) LAL SHAH *v* HIRA LAL.
106 P.R. 1917=41 I.C. 163=
119 P W.R. 1917.

——S. 19—*Statements as to right.*

The statements of a person who is in the best position to know all about his property ought not to be lightly set side on the mere ground that they were made with fraudulent purpose. If his legal representative alleges the statement to be incorrect, the burden of proving that this is so, lies on him. (*Reid*, C.J. *and Robertson*, J.) RAJA RAM *v* FATTEH CHANDA. 187 P.L.R. 1912=17 I C. 216=
248 P.W.R. 1912.

——S. 19—*Admission, in adoption—Deed of adoption—Burden of proof.*

The admission of an adoption in an adoption deed is an admission both of the fact as well as of the validity of the adoption and the burden of proving the contrary is on the person making such admission. (*Sadasiva Aiyar and Spencer*, JJ.) SOORATHA SINGHA *v.* JANAKA SINGA. 43 Mad. 867=12 L.W. 245=
59 I.C. 585=(1920) M.W.N. 528.

——S. 19—*Admissions—Value of.*

Courts should not lightly ignore admissions made by parties to the proceedings. (*Seshagiri Aiyar and Bakewell*, JJ.) KUNNATH MADAMPIL KUNJUNNI *v.* MANNARGHAT RAMANUNNI. 35 M L.J. 219=
48 I.C. 925=(1918) M.W.N. 666

——S. 19—*Admissions—Value of—Existence of mortgage.*

Where the issue is whether there was a subsisting mortgage between the parties, any admission showing that a mortgage existed is

EVIDENCE ACT (I of 1872), S. 19.

relevant. But if a specific mortgage is alleged, an admission of same mortgage is not relevant. 18 M. 462 ; 8 B. 543 ; 27 B. 271, Ref. (*Ayling and Tyabji, JJ.*) KONERI SHOLAGAN *v.* KUMARAPPUDAYAN. **21 I.C. 566 = (1913) M.W.N. 924.**

——Ss 19, 21—*Admission—Statement of third person.*

An admission by one co-mortgagee of receipt of the whole debt is evidence against the others under S. 19 of the Act ; and the admission of a third person against his own interest, where it affects his position or liability, when that position or liability has to be proved against a party to the suit is relevant against that party. 25 M.L.J. 51, foll. An admission of receipt of sums of money is in most cases an admission against his interest. Admissions in pleadings are relevant under S. 19 or 32 (3) of the Act and in the absence of the other evidence such word should be marked as exhibits in the case and there referred to as evidence in the judgment of the Court. (Per *Tyabji, J.*) The statements referred to in S. 19 become admissible only if they satisfy S. 17 as regards their nature, and S. 21, or the following sections as regards their relevancy. (*Sadasiva Aiyar and Tyabji, JJ.*) APPAVU CHETTIAR *v.* MANJAPPA GOUNDAN. **14 M.L.T. 117 = 20 I.C. 792 = 25 M.L.J. 329.**

——S. 19—*Admission by principal debtor if evidence against surety—Weight.*

An admission made by the agent (principal debtor) against his surety is admissible in evidence against the surety though the weight to be attached to it will depend upon the circumstances of each case. The admission need not have been made when the agency continued. It is sufficient if it is made while the liability continues. (*Sundara Ayiar and Sadasiva Aiyar, JJ.*) PARAMESWARA PATTAR *v.* VIYATHAN SREEDEVI. **(1913) M.W.N. 596 = 20 I.C. 637 = 25 M.L.J. 51.**

——Ss. 19 and 20—*Admission by landlord if binding on tenant.*

An admission made by landlord is not binding on his tenant A compromise entered into between the proprietors of certain land and others, whereby the parties to the compromise become joint proprietors of the land, has no binding effect upon the tenants of the land. (*Das, J.*) PURAN PANDE *v.* DHANPAT TEWARI. **52 I.C. 739.**

——S. 19—*Admission — Compromise beyond scope of suit.*

A compromise affecting property not the subject of the suit is nevertheless admissible in evidence in a subsequent suit as an admission by one of the parties. (*Chamier, C.J. and Sharfuddin, J.*) MAHADEO URAON *v.* ETWARIA. **43 I.C. 775 = (1917) Pat. 181.**

EVIDENCE ACT (I of 1872), S. 21—Representatives.

——S. 19—*Proof of relationship.*

It is settled law that a relationship such as partnership landlord and tenant and so forth may be proved apart from the documents which embody the terms of that relationship. The fact of a partition cannot be proved by oral evidence when the partition has been embodied in a document which is incapable of legal proof in any other way. (*Duckworth and Pratt, JJ.*) MG PO LUN *v.* MA E MAI. **1 Bur. L.J. 111 = 1923 Rang. 57.**

——S. 21.

REPRESENTATIVES.
MISCELLANEOUS.

Representatives.

——S. 21—*Representatives — Father and son—Parent not authorised to make admission—Son not deriving any interest from parent—Admission, whether can be used against son.*

The relevancy of an admission must be determined by reference to the terms of the Evidence Act. The father's admission in a previous suit cannot bind a son in a subsequent suit if the latter does not derive his interest in the subject-matter of the subsequent suit from the former. Nor can the father be regarded as having been expressly or impliedly authorised by the son to make the admission. In a suit by reversioners for recovery of property they, in no way, claim through their parents nor could their parents be regarded as authoried to make the admissions. Therefore admissions by parents in former suits are irrelevant and inadmissible. (*Lord Moulton*). SREEMUTHY MANOHARAIN DEBI *v.* HARIPADA MITTER. **24 I.C. 311 = 18 C.W.N. 718 (P.C.).**

——S 21—*Representative—Admission by one of two brothers whether binding on the other.*

An admission by one of two brothers is not binding on the other. (*Tudball, J.*) MUSAMMAT MAINA *v.* MADHO PRASAD. **24 I.C. 105.**

——S. 21—*Representative—Consideration recited — Admissibility in evidence against representatives.*

A recital as to the passing of consideration of a mortgage-deed is admissible in evidence against the mortgagor's transferee under S. 21, Evidence Act. (*Ryves and Piggott, JJ.*) NARAIN SINGH *v.* BHIKKA RAM. **21 I.C. 841.**

——S. 21—*Representatives — Mortgage—Admission of passing of consideration—Admissibility in evidence against purchaser.*

An admission in a mortgage-deed and before the registering officer by the mortgagor as to the passing of consideration can be admitted in evidence against the auction-purchaser of the equity of redemption. 22 C. 909 ; 34 A. 194, Foll. ; 17 A. 428, Not Foll. (*H. Griffin and Chamier, JJ.*) BAKSHI RAM *v.* LILADHAR. **35 All. 353 = 21 I.C. 619 = 11 A.L.J. 371.**

EVIDENCE ACT (I of 1872), S. 21—Representatives.

———Ss. 21 and 18—*Representative — Admission by mortgagor—Transferee.*

Under S. 21, a recital by the mortgagor in the mortgage-deed that he received the consideration is admissible in evidence against the transferees of the equity of redemption from the mortgagor. A finding based on such recital is a finding of fact and conclusive in second appeal. 10 A.L.J. 390; 35 A. 194, Foll. (*Stanley*, C.J. *and Banerjee*, J.) NAWAL KUNWAR *v.* BAKHTAWER SINGH. **17 I.C. 644= 10 A.L.J. 390.**

———S. 21—*Representatives — Insolvent, admission of, is not evidence against Official Receiver.*

The admission of an insolvent, after the act of insolvency, may be admissible against himself but cannot furnish evidence against another insolvent or the Official Assignee. Even an omission to object to its admissibility does not render it legal evidence. (*Mookerjee and Buckland*, JJ.) LUCHIRAM *v.* RADHA CHARAN. **66 I C. 15=34 C.L.J. 107.**

———S. 21 (2)—*Representatives—Admission by agent—Inadmissible.*

The principal cannot prove his title to property by his agent's admission in his favour. (*Scott-Smith and Martineau*, JJ.) MAULA BAKSH *v.* JAFAR ALI KHAN. **4 Lah. L.J. 437.**

———S. 21—*Representatives—Co-defendants—Admissions if admissible against other defendants.*

A 2nd defendant's plea was not made evidence at the trial by examining her or otherwise, it cannot be considered except with reference to the determination of the extent if any, recoverable from her. *A fortiori* it cannot be considered against the defendants in the other suits. 20 I.C. 792, F. (*Oldfield and Tyabji*, JJ.) SESHAGIR AIYANGAR *v.* SADACHI. 29 I.C. 924.

———S. 21—*Representatives—Hindu reversioners—Admissions made by one when binding on others.*

A statement made by one reversioner is not admissible against another reversioner since the latter does not derive his interest through the former. 22 A. 33; 28 M. 57, Ref. (*Drake Brockman*, J.C.) GULAB THAKUR *v.* FADALI. **68 I.C. 566.**

———S. 21—*Representatives—Admissions—Parties and privies—Auction-purchaser.*

The recital in a mortgage-deed and the admissions made by mortgagor while registering the document as regards the payment of consideration can be admitted in evidence against a subsequent auction-purchaser of the mortgaged property. 6 C. 268; 17 All. 428; 25 All. 159, Rel. (*Piggott*, A.J.C.) SAYED ZAHID ALI *v.* BUDHSEN. **21 I.C. 554.**

———S. 21—*Representatives—Admission of executant how far binds his representative.*

EVIDENCE ACT (I of 1872), S. 21—Miscellaneous.

Where the execution of a mortgage-deed and receipt of consideration is admitted by its executants, their admiesion is evidence against the mortgagors and their representatives in interest under S. 21, Evidence Act. The burden of proving that the consideration was not as that stated in the deed is on the executants and their representatives in interest. 7 W R. 441, F. (*Chamier*, C.J. *and Sharfuddin*, J.) PADM. KUMAR *v.* MANHU SINGH. **39 I.C. 635= 1 P.L.W. 413.**

Miscellaneous.

———S. 21—*Admissions of parties not to be lightly ignored.*

The admissions of parties are binding on them and Courts should not lightly go behind them. (*Arthur Wilson*). DAMODAR NARAYAN *v.* DALGLIESH **38 Cal. 432=38 I.A. 65= 15 C.W N. 345=9 M L.T. 364= 8 A.L J. 441=13 C L J. 512= 13 Bom. L.R. 396=9 I.C. 913= (1911) 2 M.W.N, 182 (P.C.).**

———S. 21—*Admissions— Context — Evidence against person admitting.*

A party cannot disconnect a so-called admission of his adversary from the context in which it appears and use a part of it in his favour. (*Griffin and Chamier*, JJ.) SRI RAM *v.* RAM LAL. **18 I.C. 878= 11 A L.J. 255.**

———Ss. 21 and 32 (2)—*Debtor and creditor.*

Entries by a creditor in the *Samadaskat* book of his debtor mentioning the fact of the debt and the deposit of the title-deeds come under S. 21 (2). Admissions in the favour of the creditor are not excluded, if admissible under S. 32. (*Beaman*, J.) JETHIBAI *v.* PUTLIBAI. **17 I.C. 722=14 Bom. L.R. 1020.**

———S. 21—*Deposition of insolvent under S. 36 of the Pres. Towns Ins. Act—Admissibility.*

The deposition of an insolvent examined under S. 36 of the Act and reduced to writing is admissible as evidence against him in a criminal charge. (1896) 2 Q. B. 260; 19 Ch. D. 580, Ref. (*Rankin*, J.) *In re*, JOSEPH PERRY. **21 Cr. L.J. 78=54 I.C. 478= 46 Cal. 996.**

———S. 21— *Admissions* — Solenamah—*Statements in.*

An admission by a party to a suit in the written statement and *Solenamah* by which the suit is compromised, does not lose its evidentiary value on the *Solenamah* being set aside at the instance of other parties. (*Fletcher and Shamsul Huda*, JJ.) NEAMAT-UN-NISSA BIBI *v.* GOLAM PARREHATION KAZI. **22 C.W.N. 512=45 I.C. 601= 27 C.L.J. 502.**

EVIDENCE ACT (I of 1872), S. 21—Miscellaneous.

———**Ss. 21 and 31**—*Admission of title and the binding effect thereof on party admitting.*

A mere admission has not the effect of creating title though in the event of the title existing, it would have bound the party so admitting. (*Chatterjee and Newbould*, JJ.) HARI MOHAN PAL *v.* KAILASH CHANDRA DHUR. **37 I.C. 983.**

———**Ss 21 (1) and 32**—*Statement in sale certificate—Purchase of holding in execution of merely money decree against tenant by landlord—Admissibility.*

Where the holding of tenants was purchased by the landlord in execution of a money decree against them, a statement in the sale certificate as to the extent of their holding is a statement against interest, when they held land in excess of it, and hence admissible in evidence in favour of the landlord, 31 C. 380, Dist. (*Mookerjee and Beacheroft*, JJ.) MADKI BISWAS *v.* JAGALINDIA NATH. **24 I.C. 283.**

———**S. 21**—*Statement as to rent payable—Admissibility of.*

A recital in a writ of attachment is not admissible in evidence in favour of the maker of the statement and as against persons who claim under an independent title. 31 C. 380, Foll. (*Mookerjee and Carnduff*, JJ.) MOHURUDDIN KHAN *v.* SUMERA GIRI. **15 I.C. 540.**

———**S. 21**—*Admissions—Value of.*

What a party admits to be true may reasonably be presumed to be so and until the presumption is rebutted, the fact admitted must be taken to be established. 29 All. 184, P.C. (*Pelman*, J.) GIR SINGH *v.* HERNAM SINGH. **55 I.C. 191 = 1 Lah. 137.**

———**S. 21**—*Admission—Pedigree.*

The admission of the correctness of a pedigree table by a person will be very strong evidence against him, though he will not be estopped from proving its incorrectness. (*Robertson and Chevis*, JJ.) CHAMBELA *v.* KUNDAN. **6 P.W.R. 1913 = 18 I.C. 611 = 142 P.L.R. 1913**

———**S. 21**—*Admission—Evidentiary value of.*

An admission by a party is of much value as evidence against him, and may, if unexplained be even decisive. (*Wallis*, C. J. *and Ayling*, J.) SANKARACHARYA SWAMIGAL *v.* MANALI SARAVANA MUDALIAR. **51 I.C. 876.**

———**S. 21 (1) and S. 32 (5)**—*Statement as to date of birth, when admissible.*

Statements as to the date of birth of a person contained in his deposition and in affidavits filed by him are admissible in evidence under S. 21 (1) read with S. 32 (5) if made by a person having special means of knowledge

EVIDENCE ACT (I of 1872), S. 22.

whether personal or hearsay. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. **(1916) M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.**

———**S. 21**—*Admissions — Statements by postman in departmental enquiry—Admissibility.*

Oral and documentary evidence as to the statements of a postman in a departmental enquiry are inadmissible in evidence in his absence. (*Ayling*, J.) *In re* KUPPILI PRAKASA ROW. **26 I.C. 307 = 16 Cr. L J 3.**

———**S. 21**—*Admissions in criminal proceedings.*

Admissions by the accused made before the beginning of the proceedings alone can be proved under S. 21, as in a civil suit. (*Benson, Sundara Iyer and Phillips*, JJ.) G. JERMIAH *v.* F.S. VAS **36 Mad. 457 = 10 M L T. 506 = (1911) 2 M.W.N. 576 = 12 I.C. 961 = 12 Cr. L.J. 585 = 22 M.L J. 73.**

———**S. 21**—*Admissions — Evidence—Title—Ownership of land.*

A plaintiff is not entitled to a declaration of proprietary right in the face of an admission by the plaintiff's predecessors that they had only *kan* and *kumki* rights though the plaintiff may have evidence showing enjoyment not ordinarily referable to the admitted rights. (*Krishnaswami Iyer and Ayling*, JJ.) CHERA SHANKARANARAYANAPPAYA *v.* SECRETARY OF STATE. **(1911) 1, M.W.N. 91 = 9 I.C. 329 = 9 M.L.T. 218.**

———**S. 21**—*Admissions — Voluntary — Effect of.*

Where in cross-examination a witness admits that a statement previously made by him is false he ought to be asked in re-examination why he made a statement which was false. The mere fact that the witness acknowledges the previous statement to be false is no justification for rejecting such previous statement, if on other grounds the Court is able to reach the conclusion that statement is in substance true. (*Lindsay*, J.C. *and Stuart*, A.J.C.) SUSHIL CHANDRA LAHIRI *v.* EMPEROR. **20 Cr. L.J. 465 = 51 I C. 449 = 6 O L J. 210.**

———**S. 22**—*Recital in bond—If admissible against representative of executant.*

An admission of receipt of consideration in a bond is evidence against the representative in interest of the executant of the bond. (*Griffin and Chamier*, JJ.) BEHARI LAL *v.* MAKHDUM BAKHSI. **35 All. 194 = 18 I.C 744 = 11 A.L J. 221.**

———**S 22**—*Admission in maker's interest.*

A party cannot use in his favour an admission by his predecessor made in own

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interest. (*Jenkins and Mookerjee*, JJ.) BEJOY CHAND MOHATAP *v.* KALI PADA CHATTERJEE. **17 C.W.N. 1013=20 I.C. 78=18 Cr. L.J. 347=41 Cal. 57.**

———S. 23—*Admission before arbitrators—Value of.*

An admission before an arbitrator is admissible in evidence although it is for the Court to attach whatever weight it thinks proper to it. S. 23 of the Evidence Act does not apply to such admission. (*Coutts and Das*, JJ.) PUNJAB SINGH *v.* RAMAITAR SINGH. **4 P.L.J. 676=52 I C. 348=(1920) Pat. 52.**

———S. 24.

CONFESSION, ACCEPTANCE IN PART.
CONFESSION, EVIDENTIARY VALUE.
CONFESSION IN POLICE CUSTODY.
CONFESSION, WHAT IS.
INDUCEMENT.
PERSON IN AUTHORITY.
RETRACTED CONFESSION.
MISCELLANEOUS.

Confession, acceptance in part.

———Ss. 24 and 29—*Confession—Acceptance in part if may be accepted or rejected in part.*

A confession is an evidence for the prisoner as well as against him and must be taken altogether. But it is only where no other evidence is forthcoming that this can be pressed to the extent of requiring that no part be accepted as true without accepting the whole. 26 W.R. 15 Cr. and 25 W.R. 23, Cr, Foll. If other evidence incompatible with a part of the confession is on record, it may be relied on in preference to that part. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) HASNU *v.* EMPEROR. **53 I.C. 145=20 Cr. L.J. 767.**

———S. 24—*Confession—Acceptance in part—Confession—If must be accepted or rejected in entirety.*

Although a confession must be taken as a whole and considered along with the admitted facts of the case, the Court is at liberty to disregard any statement in the confession which it disbelieves. (*Drake-Brockman*, J C.) KAMODA *v.* EMPEROR. **46 I C. 703=19 Cr. L J. 785.**

———Ss 24, 25 and 26—*Confession, acceptance in part—Entire confession to be excluded.*

A Judge should decide the question of admissibilty of confession first and then exclude it from the record if inadmissible and keep its terms from the assessors Inadmissible confession would be inadmissible wholly. (*Parlett*, J.) NGA BA *v.* EMPEROR. **38 I C 767=18 Cr. L.J. 383.**

Confession, evidentiary value.

———Ss. 24 and 25—*Confession—Evidentiary value—English law—Statement by accused—When admissible.*

Under the English Criminal Law, no statement by an accused is admissible in evidence

EVIDENCE ACT (I of 1872), S. 24—Confession in police custody.

against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The fact that a statement was made by an accused person under circumstances of hope, fear, or otherwise, strictly speaking, goes only to minimise its weight. The rule by which, is excluded evidence of statements made by a prisoner, when he has been induced to make them, by hope held out or fear inspired by a person in authority, is a rule of policy. (*Lord Sumner*). IBRAHIM *v.* EMPEROR. **18 C W.N. 705=15 Cr. L.J. 323=23 I.C. 678=1 L.W. 989 (P.C.)**

———S. 24—*Confession—Evidentiary value—Corroboration.*

The law does not require that the confession of an accused person should be corroborated before it can be acted upon. It is for the Court to decide whether it believes a confession or not. (*Stuart and Wallach*, JJ.) EMPEROR *v.* DHANI. **52 I C. 881=20 Cr. L J. 721.**

———S. 24—*Confession—Evidentiary value—Admissibility.*

A confession is admissible only when it is voluntary and made without any pressure. (*Griffin and Chamier*, JJ.) EMPEROR *v.* GULABU. **35 All. 260=14 Cr. L.J. 211=19 I.C. 307=11 A.L J. 286.**

———Ss. 21 and 25—*Confession—Evidentiary value—Voluntary—Evidence of Magistrate.*

Where the Magistrate in whose presence a confession was made is called as a witness and swears that the statement was made before him freely and willingly and not in the presence of a policeman, the confession is voluntary and reliable. (*Rattigan*, C.J. *and Martineau*, J.) DAULAT RAM *v.* EMPEROR. **2 Lah. L J. 653.**

Confession In Police Custody.

See also S. 26.

———S. 24—*Confession in police custody—Presence of the police—Accessory after fact.*

The evidence was that the accused was kept in charge of a Head Constable and was being questioned by the Sub Inspector and that after being in that condition for 3 or 4 hours under the continued questioning to which he was subjected, he finally broke down and made a confession to the Magistrate at midnight. *Held*, that the confession was inadmissible under S. 24 of Evidence Act as it was not voluntary. A self-exculpatory statement by an accessory after the fact is inadmissible in evidence. (*Huda and Rankin*, JJ.) EMPEROR *v.* PRAMATHA NATH BAGCHI. **30 Cr. L.J. 503=55 I.C. 282=21 C.L.J. 266.**

EVIDENCE ACT (I of 1872), S. 24—Confession in Police Custody.

——S. 24—*Confession in police custody—Inadmissibility of.*

When a confession was made after police custody for several days and protracted consultation between the accused and the investigating officers, and was subsequently retracted the confession is inadmissible. (*Richardson and Huda*, JJ.) MOBARAK ALI *v.* EMPEROR. **20 Cr. L.J. 833=53 I.C. 929=23 C.W.N. 886.**

——S. 24—*Confession in police custody—Admission—False defence.*

Any statement made to the Police to the effect that an article produced by suspected men really belonged to the deceased does not amount to a confession but to an admission because the defence is not always stated during police enquiry. (*Chevis and Abdul Qadar*, JJ.) SHUA DIN *v.* EMPEROR. **5 Lal. L.J. 128.**

——S. 24—*Confession in police custody—Retracted—Corroboration.*

A confession by an accused person made after he has been for a considerable time in police custody and subsequently retracted ought not to be acted on without corroboration. (*Coutts and Adami*, JJ.) RUSNA TELLI *v.* EMPEROR. **54 I.C. 881.**

——Ss. 24, 25, 26, and 27—*Confession in police custody and statements, by one accused against another.*

Statements made to police, while in custody are not admissible evidence, though those statements may be incriminating. A statement made by the accused against another, and a confirming statement made by another accused, when questioned by Police before the Headman are excluded by the above sections of the Act; and S. 24 does not admit as legal evidence an incriminating statement to Headman at the latter's suggestion to speak the truth, lest witnesses for the other side may let it out when called. (*Coxe*, C. J.) ZETA *v.* EMPEROR. **18 Cr. L.J. 106=37 I.C. 314=10 Bur. L.T. 270.**

Confession, what is.

——S. 24—*Confession—What is—Accused on trial—Evidence of identification.*

A confession made voluntarily in the sense that it was made spontaneously and without any inducement is admissible in evidence under S. 24 of the Evidence Act. Since an accused person cannot give evidence while on his trial secondary evidence of identification by him is inadmissible. (*Walsh*, J.) KHETAL *v.* EMPEROR. **45 A. 300=21 A.L.J. 143=24 Cr. L.J. 526=1923 A 352.**

——S. 24—*Confession, what is—Cr. P. C., Ss. 164 and 339 (2).*

Any statement by a person which would suggest an inference as to his guilt may be a confession within S. 24 of the Act. Where a confession recorded under S. 164 of the Cr. P. C., was procured by a Police Officer by the offer of an inducement, it is inadmissible under S. 24 of the Evidence Act. Per *Shah*, J.—S. 24 will apply even if the person confessing was not accused person at the time of confession. It is sufficient if he ultimately becomes an accused person with reference to the charge in respect of which he is said to have confessed. Though a statement of an approver may be given in evidence against him under S. 339 (2) of the Cr. P.C., it cannot be said that the operation of S. 24 is altogether excluded. If it is shown that some influence was proceeding from some authority, simultaneously with the legal tender of pardon, which would invite the application of S. 24 of the Evidence Act, then the confessional part of the statement would be inadmissable by virtue of the section. Per *Heaton*, A.C.J.—(*Hayward*, J. Semble) :—A statement falling within S. 339 (2) of the Code is beyond the operation of S. 24 of the Evidence Act. (*Heaton*, A.C.J., *Shah and Hayward*, JJ.) EMPEROR *v.* CUNNA. **22 Cr. L.J. 68=59 I.C. 324=22 Bom. L.R. 1247.**

EVIDENCE ACT (I of 1872), S. 24—Inducement.

Inducement.

——Ss. 24 and 30—*Inducement of pardon—Admissibility against co-accused.*

In three cases, each of them involving a large number of alleged dacoities, the accused were tried together for participation in three separate dacoities, committed at different times, and at different places, but round about the same season and round about the same neighbourhood. One of the accused was informed by the Magistrate that if he made a voluntary confession which was found to be full and true, his prayer for being made an approver would receive due consideration and eventually he made an elaborate statement amounting to a confession under S. 164, Cr. P. Code. He was subsequently tried and convicted and his confession was used not only against himself but against the other accused. *Held* that the confession was inadmissible under S. 24 of the Evidence Act and as it formed the main reason for the conviction of the other accused, their conviction could not stand. (*Walsh and Kanhaiya Lal*, JJ.) TARA *v.* EMPEROR. **45 A. 633=21 A.L.J. 585=24 Cr. L.J. 785=1924 All. 72.**

——S. 24—*Inducement—Accused confession that the confession is under inducement.*

Where the accused whose confession is being recorded informs the Magistrate that he is making the confession under inducement, the confession is not admissible, and cannot be allowed to go to the Jury. Whether there was inducement or not is immaterial. (*Macleod*, C.J. *and Shah*, J.) DINANATH SUNDRAJI *v.* EMPEROR. **45 Bom. 1086=60 I.C. 1005=22 Cr. L.J. 318=23 Bom. L.R. 338.**

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EVIDENCE ACT (I of 1872), S. 24—Inducement.

——S. 24—*Inducement—Confession suspected to be obtained by—Burden of showing that it was truly made on prosecution.*

If in the circumstances of a case it appears to the Court that there is reason to suspect that the confession was obtained by inducement so as to bring it under the provisions of S. 24, the prosecution must show that the confession was freely made, Otherwise it cannot be admitted in evidence. (*Newbould and Suhrawardy*, JJ.) ASHOTO DUTT *v.* EMPEROR.
68 I.C. 413.

——S. 24—*Inducement—Threat to put the woman to trouble and offer of pardon.*

A statement to a Magistrate by an accused, through fear caused by a threat that his females would be troubled, is inadmissible and a statement under the belief that the accused would be offered a free pardon is also inadmissible. (*Walmsley and Huda*, JJ.) EMPEROR *v.* ANANT KUMAR BANERJI.
22 Cr. L.J. 225=60 I.C. 417=32 C.L.J. 204.

——S. 24—*Inducement, threat, etc.*

K as a witness made a statement implicating himself, in the trial of one V. He was then made a co-accused. It was found that the statement was made under circumstances mentioned in S. 24 of the Act. *Held*, that the statement was irrelevant against him. (*Reid*, C.J. *and Johnstone*, JJ.) EMPEROR *v.* UMADA. 9 P.R 1911 Cr.=166 P.L.R. 1911=10 I.C. 340=12 Cr. L.J. 267=22 P.W.R. 1911 Cr.

Person in Authority.

——S. 24—"*Person in authority.*"

The test as to whether a person is a person in authority, is whether that individual had authority to interfere with the matter and had any concern or interest in it sufficient to give him that authority. Police Patel in a village is such a person. 9 B.H.C. 358 at 369 Foll. (*Batchelor and Hayward*, JJ.) FAKIRA APPAYA *v.* EMPEROR. 40 Bom. 220=17 Cr. L.J. 133=33 I.C. 309=17 Bom. L.R. 1039.

——S. 24—*Person in authority.*

A collecting panchayat and an assistant panchayat who have taken part in holding the enquiry into the circumstances under which the offence has been committed constitute "person in authority" within the meaning of S. 24 of the Evidence Act. Where in answer to a question to the accused whether he would be saved from the consequence of his act if he confessed, the assistant panchayat gave him an assurance that he would be let off if he disclosed everything and the confession by the accused was made as a result of such assurance the confession is inadmissible in evidence. The accused in this case made a confession to the assistant panchayat before his arrest, on first January, 1922. The accused was thereupon kept in custody till the next day when the police formally arrested him and sent him before a Magistrate. The Magistrate recorded his confession on the 4th of January. *Held*, that the improper influence of the assistant panchayat continued up to the time when the confession was made and it was consequently inadmissible in evidence. (*Sanderson*, C.J. *and Panton*, J.) EMPEROR *v.* GANESH CHANDRA GODAR. 50 C. 127=24 Cr. L.J. 760=1923 Cal. 458.

EVIDENCE ACT (I of 1872), S. 24—Person in authority.

——S. 24—*Person in authority—Meaning of—Prosecutor—Doubtful circumstances—Onus on prosecution.*

The words "person in authority" in S. 24 include the prosecutor. If in the circumstances of a case it appears to the Court that there is reason to suspect that the confession was obtained by inducement, it is for the prosecution to show that the confession was freely made, otherwise it would not be admissible in evidence against the accused. (*Newbould and Suhrawardy*, JJ.) ASHUTOSH DUTT *v.* EMPEROR. 68 I C. 413=26 C.W.N. 54.

——S. 24—*Person in authority—Confession to excise superintendent—Admissibility of.*

A confession made by an accused to the Superintendent of excise in a trial for illicit possession of opium is admissible, provided no inducement, threat or promise, was held out to the accused for making the confession. (*Chitty and Smither*, JJ.) ROKUN ALI *v.* EMPEROR.
19 Cr. L.J. 524=45 I.C. 284=22 C.W.N. 451.

——S. 24—*Person in authority—President of Panchayat if—Confession.*

The president of a panchayat which was to consider a case is a person in authority within S. 24, and confession made to him is not therefore admissible in law. (*Chitty and Walmsley*, JJ.) EMPEROR *v.* AUSHI BIBI.
23 C.L J. 477=33 I.C. 828=17 Cr. L J. 188=20 C.W.N. 512.

——S. 24—*Person in authority—Lambardar—Confession induced by threats—Admissibility.*

A Lambardar is a "person in authority" and a confession which is the result of threats used by him is inadmissible under S. 24. (*Scott-Smith and Abdul Raoof*, JJ.) MUHAMMADAR *v.* CROWN.
4 Lah. L J. 235=1922 Lah. 263.

——Ss. 24 and 25—*Person in authority—Confession to Zaildar.*

A confession made by a suspected person regarding his guilt (murder case) on an inducement of the Zaildar that his own (Zaildar's) brother had put off in a murder case on making a clean breast of the matter, is inadmissible, as the zaildar, was a leading man holding responsible post. (*Johnstone*, C.J. *and Chevis*, J.) KARAN SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr.=16 Cr. L.J. 226=26 P.R. 1916, Cr.=34 I C. 642=153 P.L.R. 1916.

EVIDENCE ACT (I of 1872), S 24—Person in Authority.

———S. 24—*Person in authority—Lambardar*--Zaildar.

A *Zaildar* or Lambardar is an officer who is to help the police in their investigation. A confession made to such an officer, who promised the release of the accused, is not admissible in evidence for it is a promise made by a person in authority. (*Reid*, C J. *and Rattigan*, J.) KUTAB ALI *v.* EMPEROR. **14 P R. 1911 Cr. = 12 I.C. 973 = 12 Cr. L.J. 597 = 42 P.W.R. 1911 Cr.**

———S. 24—*Person in authority—Zaildar*

Admissions made to a *Zaildar must be left out* when the *Zaildar* told the accused before their statements were recorded that they would get some benefit from Govt. if they spoke the truth. (*Kensington and Shahdin*, JJ.) MUTSADDI *v.* EMPEROR. **221 P L.R. 1911 = 12 I.C 642 = 12 Cr. L J. 554 = 57 P.W.R. (Cr.) 1911.**

———S. 24—*Person in authority—Confession to panchayatdars—Admissibility.*

Panchayatdars do not come under the definition of "persons in authority" in S. 24 of Evidence Act and hence confession made to them are admissible. (*Krishnan and Wallace*, JJ.) MULIMAYANDI THEVAN *In re.* **45 M.L.J. 845 = 18 L.W. 886 = 1924 Mad. 230.**

———Ss. 24, 25 and 26—*Person in authority—Statement leading to direct inference of guilt—Military officer assisting in police investigation—Statements made at police search and before arrest—"Custody."*

To constitute a 'confession' under the Evidence Act, it is not necessary that the person confessing should make a full and explicit admission of his guilt so clean as to leave no other hypothesis tenable. It is enough if they lead to an inference of guilt. The words "accused person" in Ss. 24 to 26 include any person who subsequently becomes accused, provided that at the time of making the statement, criminal proceedings were in prospect. The expression "person in authority" has a wider meaning than the actual prosecutor and the test is, has the person any authority to interfere in the matter and any concern or interest in it, sufficient to give him authority, 8 B.H.C.R. 358; 8 Bom. L.R 507; 26 I.C. 161, Ref. (*Ayling and Phillips*, JJ.) SMITH *v.* EMPEROR. **43 I C. 606 = 19 Cr. L.J. 189.**

———S. 24—*Person in authority—Thugee.*

A confession made to a Thugee by an accused who had been sent for by the former after being told that he would not be punished if he was not a party to the offence is irrelevant and inadmissible in evidence as the Thugee is a person in authority within the meaning of S. 24 of the Act and what the Thugee told him was an inducement to make a statement. Other answers and questions based on the inadmissible statement are also inadmissible. (*Fox*, C.J. *and Parlett*, J.) NGA KYA THIN *v.* EMPEROR. **15 Cr. L J. 681 = 8 Bur. L.T 39 = 26 I.C. 129 = 8 L.B.R. 94.**

EVIDENCE ACT (I of 1872), S. 24—Retracted Confession.

———Ss. 24, 25 and 28—"*Person in authority*" *explained.*

S. 24 refers only to a person in actual authority, the test being the possession of some power or control over the accused with reference to his case. Neither a co-villager, nor a Zamindar is a person in authority unless the Zamindar is directed by the police to investigate. (*Hayward*, J.C. *and Fawcett*, A.J.C.) LAUNG *v.* EMPEROR **18 Cr. L J. 58 = 37 I.C. 42 = 10 S.L.R. 140.**

———S. 24—*Person in authority—Zamindars.*

A confession to certain Zamindars sent for that purpose by the police who held out an inducement to the accused, that they would save him, is inadmissible under S. 24, because they were investigating the offence just like policemen and must be considered to be persons in authority who procured the confession by their inducement and promise. (*Hayward*, J.C. *and Leggatt*, A.J.C.) IMPERATOR *v.* DABUD. **12 Cr. L.J. 119 = 9 I.C. 718 = 4 S L R. 209.**

Retracted Confession.

———S. 24—*Retracted confession — Proper time—Duty of Court.*

Where the confession of guilt was retracted, the proper time to take into consideration such a confession, comes after the Court is in possession of the entire prosecution evidence and can estimate what the effect of that evidence would be, considered apart from any statement which the accused person or persons may from time to time have made. (*Piggot and Walsh*, JJ). SUKHNIA *v.* EMPEROR. **20 A.L.J. 669 = 24 Cr. L.J. 609 = 1922 All. 266.**

———Ss. 24 and 30—*Retracted confession—Statement by a convict implicating another—Admissibility.*

A convicted prisoner undergoing a term of imprisonment made a statement before a Magistrate implicating the petitioner in the offence for which he had been convicted. But when he was examined as a witness he denied the implication of the petitioner. *Held*, the statement was not admissible in evidence. (*Tudball*, J.) NOOR BIJJI KHAN *v.* EMPEROR. **18 A.L.J 87 = 54 I.C. 893 = 2 U.P.L.R. (H.C.) 37.**

———S. 24—*Retracted confession.*

Per *Shah*, J.—A retracted confession carries much less weight than one which has been adhered to. Per *Crump*, J.—A confession is after all an evidence in so far as it bears upon the crime into which the Court is at the time enquiring and circumstances corroborating the

EVIDENCE ACT (I of 1872), S. 24—Retracted Confession.

confession in material points are themselves equally immaterial. (*Shah and Crump, JJ.*) GANGARAM *v.* IMPERATOR. **22 Cr. L.J. 529 = 62 I.C. 545 = 22 Bom. L.R. 1271.**

———**S. 24**—*Retracted confession—Confession—Value of, as evidence.*

It cannot be laid down as an inflexible rule that a confession made by a prisoner cannot be accepted as evidence of his guilt without independent corroboration evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a confession which has been retracted unless after a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. (*Newbould and Pearson, JJ.*) EMPEROR *v.* BISESWAR DEY.
24 Cr. L.J. 145 = 26 C.W.N. 1010 = 1923 Cal. 217.

———**S. 24**—*Retracted confession.*

Even a retracted confession is admissible in evidence but the jury must be allowed to decide what value should be attached to it. (*Newbould and Suhrawardy, JJ.*) ABDUL SALIM *v.* EMPEROR. **49 Cal. 573 = 26 C.W.N. 680 = 35 C.L.J. 279 = 23 Cr. L.J. 657 = 1922 Cal. 107.**

———**S. 24**—*Retracted confession — Conviction.*

It is very unsafe to convict an accused person upon a retracted confession unless the confession is confirmed by other evidence. (*Banerjee, J.*) HAR PRASAD *v.* EMPEROR.
36 I.C. 133 = 17 Cr. L.J. 453.

———**S. 24**—*Retracted confession — Corroboration.*

A confessing prisoner should not be convicted upon a retracted confession unless it is corroborated in material particulars. Where it is a question of using a confession against a co-accused and the Court is not prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime but also unmistakably connects the co-accused with the crime. (*Scott-Smith and Shadi Lal, JJ.*) EMPEROR *v.* MUSSAMMAT JAWAI.
19 P.W.R. (Cr.) 1918 = 44 I.C. 179 = 19 Cr. L.J. 275 = 70 P.L.R. 1918.

———**Ss. 24 and 25**—*Retracted confession.*

When a retracted confession is the sole evidence against an accused, it can be of but

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little value especially remembering the competition for a pardon which sometimes occurs where a number of persons are suspected of an offence and some have already confessed or are believed to have confessed. (*Johnstone, C.J. and Chevis, J.*) KARAM SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr. = 17 Cr. L.J. 226 = 126 P.R. 1916 Cr. = 34 I.C. 642 = 153 P.L.R. 1916.

———**S. 24**—*Retracted confession — Statement made under grant of pardon—Where admissible—Conviction based on.*

A Court should not convict a person upon a statement made by him but subsequently retracted owing to a promise of pardon, in the absence of corroboration in material particulars unless the peculiar circumstances of making the confession or the reasons of retraction show the genuineness of the confession in spite of its revocation. (*Rattigan and Scott-Smith JJ.*) KHUSHI *v.* EMPEROR. **16 Cr. L.J. 815 = 31 I.C. 831 = 6 P.W.R. 1916 (Cr.).**

———**S. 24**—*Retracted confession—Value of—Discovery of clothing — Statements under S. 288, Cr. P. Code—Value of.*

A confession made by an accused before the committing Magistrate which he retracts both before and after commitment, is of no value as evidence against him. A conviction cannot be founded upon statements of witnesses under S. 288, Cr. P. Code, when they came forward after the accused confessed and gave only circumstantial evidence insufficient to connect the accused with the commission of the crime. (*Shah Din and Scott-Smith, JJ.*) GHANWARA *v.* EMPEROR. **16 Cr. L.J. 612 = 30 I.C. 426 = 13 P.W.R. 1915 (Cr.).**

———**S. 24**—*Retracted confession—Value of—Against co-accused.*

It is not illegal to convict on the uncorroborated confession of the accused provided the Court is satisfied that it was voluntary and free, and it is immaterial from the point of view of pure legality that the confession has been retracted. It is however not safe in general to convict on an uncorroborated confession from the point of view of common experience and prudence, and when it is a question of a confession against a co-accused, the corroboration must not only confirm the general story of the crime but must clearly connect the co-accused with it. (*Johnstone and Scott-Smith, JJ.*) JAWAN *v.* EMPEROR.
26½ P.L.R. 1914 = 30 P.R. 1914, Cr. = 25 I.C. 634 = 15 Cr. L.J. 626 = 50 P.W.R. 1914, Cr.

———**S. 24**—*Retracted confession — Proof of.*

Where the accused takes back the confession before the committing Magistrate and at the Sessions trial, it is not admissible unless the

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Court is satisfied of its truth and voluntary character. (*Krishnan and Wallace*, JJ.) BASIREDDI NARIAPPA *v.* EMPEROR.

45 M.L.J. 613=18 L.W. 606=33 M.L.T. H.C. 77=33 M.L.T. (H.C.) 156=(1923) M.W.N. 697=25 Cr. L.J. 210=1924 M. 391.

——**S. 24**—*Retracted confession—Value of—Corroboration, if necessary.*

There is no rule of law requiring a retracted confession to be supported by corroborative evidence in material particulars. The use to be made of such a confession is more a matter of prudence than of law. 13 C.P.L.R. 107, Foll. (*Drake-Brockman*, J.C.) BHADDU *v.* EMPEROR. **46 I.C. 1005=19 Cr. L.J. 861.**

——**Ss. 24 and 27**—*Retracted confession—Inducement or pressure—Information given by accused to Police Officer on threat, admissibility of—Confession retracted disagreeing with other evidence in case.*

On account of the fact that a Police Officer got by means of threat an information from a prisoner which would incriminate the latter, the information is not admissible in evidence. An accused's confession subsequently retracted and not squaring with the other evidence in the case cannot be pressed as strong evidence against him. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) EMPEROR *v.* TILAK.

17 Cr. L.J. 33=32 I.C. 321=2 O.L.J. 468.

——**S. 24**—*Retracted confession—Evidentiary value.*

Even in the case of a retracted confession if the Court is satisfied that it was made voluntarily and it is true, it must act in that belief so far as that accused is concerned, in absence of evidence as to coercion by the police. (*Adami and Das*, JJ.) BIHARI ADARKI *v.* EMPEROR. **60 I.C. 789=22 Cr. L.J. 293.**

——**S. 24**—*Retracted confession.*

A retracted confession uncorroborated in material points by other reliable evidence, is of no value. Conviction on it would be bad. (*Jwala Prasad*, J.) RAGHU BHUMIJI *v.* EMPEROR. **5 P.L.J. 430=58 I.C. 49=21 Cr. L.J. 705=1 P.L.T. 241.**

——**S. 24**—*Retracted confession—Uncorroborated—Conviction.*

A conviction which has for its foundation an uncorroborated confession is not bad, if the surrounding circumstances point to the confession being voluntarily given by the confessor, and there is no evidence of coercion either by the Police or any other person. The voluntary character of the confession would not be lost by the fact that the confession was retracted before the committing Magistrate. (*Mullick and Atkinson*, JJ.) SHEO PRASAD KOERI *v.* EMPEROR. **52 I.C. 50=20 Cr. L.J. 562.**

EVIDENCE ACT (I of 1872), S. 25—"Police Officer," Meaning.

Miscellaneous.

——**S. 24**—*Evidence obtained by torture—Effect of.*

Evidence obtained by inflicting punishment in order to extract evidence from the deponent has no value and it defeats its own ends. A conduct of this kind on the part of the police officers stands the charge of severe condemnation. (*Walsh*, J.) GOKUL SINGH *v.* EMPEROR. **35 I.C. 527 (All.)=17 Cr. L.J. 351.**

——**S. 24**—*Burden of proving inducement—Confession—Retraction of—Ill-treatment and inducement—Onus.*

Where an accused when retracting a confession alleged ill-treatment and inducement by the police to extract the confession, the onus is on him to prove such ill-treatment and inducement. (*Chitty and Smither*, JJ.) EMPEROR *v.* KABILI KATONI. **19 Cr. L.J. 959=47 I.C. 811=22 C.W.N. 809.**

——**S. 24**—"*Appears*"—*Meaning of.*

It is not possible for a Court to say that the making of the confession "appears" to it to have been caused by any inducement, threat, or promise except upon evidence which is before the Court. The inference may be suggested by the confession itself, or by the evidence of the prosecution, or by the evidence adduced by the accused person, or by surrounding circumstances which the Court is always bound to take into consideration; but the conclusion cannot be reached on surmise or conjecture. (*Das and Adami*, JJ.) EMPEROR *v.* DEWANKAHAR. **4 P.L.T. 186=24 Cr. L.J. 497=1923 P. 13.**

——**Ss. 24 and 27**—*Confession of accused, relevancy of.*

Statements by an accused which are inadmissible under S. 24 cannot be made admissible by S. 27 unless the person giving information was accused of an offence and was in the custody of the police officer. (*Saunders*, A.J.C.) EMPEROR *v.* NGA AUNG BA.

17 Cr. L.J. 402=35 I.C. 962=(1916) II U.B.R. 114.

——**S. 25.**

"POLICE OFFICER," MEANING.

MISCELLANEOUS.

"Police Officer" Meaning.

——**Ss. 25 and 30**—*Police officer, meaning—Excise Officers—Self-exculpatory statements—Retracted statement—Value of.*

Statements made to Excise Officers could not be rejected under S. 26 of the Evidence Act as the Excise Officers are not police officers. Even a retracted confession is admissible against the co-accused though its weight is small. To determine whether the statements were confessions, the whole of the statements must be taken into consideration and the statements in

EVIDENCE ACT (I of 1872), S. 25—"Police officer," Meaning.

question being self-exculpatory were inadmissible against the appellant. (*Sanderson*, C.J. *and Beachcroft*, J.) AU FOONG CHINAMAN *v.* EMPEROR. **46 Cal. 411=24 C.W.N. 834=48 I.C. 504=20 Cr. L J, 24=28 C.L J. 105.**

——S. 25—*Police Officer—Meaning.*

Quaere.—Whether Excise Officers who have large powers of search, arrest and detention are to be regarded as police officers within the meaning of S. 25 of the Evidence Act. (*Teunon and Choudhury*, JJ.) MUHAMMAD IBRAHIM *v.* EMPEROR. **18 Cr. L J. 609=39 I.C. 977=21 C W.N. 694.**

——S. 25—*Police Officer—Meaning—Confession to Excise Inspector—Admissibility.*

Statement by an accused to the Excise Inspector that the opium found in his house was his, though in the nature of a confession was admissible in evidence, the Excise Inspector not being a Police Officer. (*Shah Din and Chevis*, JJ.) EMPEROR *v.* WAZIR SINGH. **3 P.R. 1918, Cr.=19 Cr. L.J. 864=41 I.C. 588=133 P.L.R. 1918.**

——S. 25—*Police Officer, meaning of—Village officer in Punjab—Confession.*

In the Punjab, village chowkidar is not a "Police Officer" or a person in authority within S. 25 of the Evidence Act A confession made by an accused person to a chowkidar is consequently admissible. (*Chevis and Leslie-Jones*, JJ.) KHUDA BAKSH *v.* EMPEROR. **19 Cr. L.J. 52=43 I.C 84=42 P.R. 1917 (Cr).**

——Ss. 25 and 26—*Police Officer, meaning—Confession to foreign Police—Admissibility.*

A confession made to a foreign Police Officer cannot be admitted in evidence according to Ss. 25 and 26 of the Evidence Act. 22 B. 235. Foll. (*Benson and Abdur Rahim*, JJ.) PUBLIC PROSECUTOR *v.* VEERARAGHAVA PILLAI. **13 Cr. L.J. 528=15 I.C. 800=11 M.L.T. 407.**

——S. 25—*Police Officer, meaning—Village kotwal.*

The Police Officer in S. 25 does not include the village watchman or kotwal in Central Provinces. (*Hallifax*, A.J C.) BHAGVATADIN *v.* EMPEROR. **57 I.C. 88=21 Cr. L.J. 868.**

——Ss. 25 and 27—*Police Officer, meaning—Native states, Police Officer of—Confession—Discovery of fact in pursuance includes discovery of offender.*

The expression "Police Officer" in S. 25 of the Evidence Act is used in its usual and more comprehensive meaning, and includes Police officers of the Native States as those of British India. A confession made to a Police officer in H.H. Nizam's Dominions is not therefore, admissible in evidence. 22 Bom. 235 Foll. The discovery of a person who is afterwards proved to be a dacoit is not the discovery of a fact within S. 27. The test of admissibility

EVIDENCE ACT (I of 1872), S. 25—Miscellaneous.

under S. 27 of an information received from an accused person in the custody of a Police Officer is whether the fact as discovered was a direct, natural and necessary consequence of the information so received. (*Mitra, Offg.*, A J.C.) SALAM *v.* EMPEROR. **19 Cr. L J. 79=43 I.C. 111=14 N.L R. 192.**

——S. 25—*Police officer, meaning—Village chaukidars whether Police officers.*

Village chaukidars must be treated as Police officers within the meaning of S. 25 of the Evidence Act. (*Lindsay*, J.C.) DAL *v.* EMPEROR. **16 Cr. L.J. 62=26 I C. 654=1 O.L.J. 687.**

——Ss. 25 and 26 — *Police officer—Member of Frontier constabulary is a meaning of Police officer.*

For the purpose of Ss. 25 and 26 of the Evidence Act a member of the Frontier Constabulary is a Police officer and confession made to him while the accused was in his custody and not in the presence of a Magistrate is inadmissible. The term Police officer in this respect must be construed not in any strict technical sense but according to its most comprehensive and popular meaning. The mere fact that the powers of the Police officers have not been actually conferred on certain members of the Frontier Constabulary does not make them any the less Police officers. (*Pipon*, J.C.) KHWAJA HASSAN *v.* EMPEROR. **71 I.C. 360=24 Cr. L J. 136.**

Miscellaneous.

——Ss. 25, 27 and 30—*Co-accused—Statement by one to Police officer that stolen property is with the other—Admissibility.*

A statement made by an accused to a Police officer, if it does not amount to a confession may nevertheless be used against him—If it amounts to a confession it must be excluded from evidence altogether under S 25 of the Evidence Act, but in either case it can only be used against the person making it—A statement by one accused can only be used against a co-accused if the provisions of S. 30 are applicable. Where in a case of dacoity against three persons, one of them mentioned to the Sub-Inspector that stolen property would be found in the house of the others, but on search nothing suspicious was found and then he pointed out a *dhupatta* worn by one of the co-accused as part of the dacoity, *held*, the statement did not amount to a confession and was inadmissible against the co-accused. (*Ryves*, J.) RAMHIT *v* EMPEROR. **20 A.L J 178=L R 3 A. 50=23 Cr, L J. 193=1922 All. 24.**

——Ss. 25 and 27—*Statement to police—Discovery—Admissibility of document.*

The accused charged with the death of his wife presented himself at a Police Station and made a report, a record of which was entered

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in the Police register. A Police officer proceeded to the house of the accused and discovered in a room a corpse of a woman. *Held*, that under S. 27 of the Evidence Act the Police officer was entitled to prove that the accused came to him at the time and place stated and said "I have killed my wife; her corpse is lying in my house," and in consequence of this statement the woman's corpse was discovered as indicated, but thereafter the defence were entitled to require the production of the whole record and to insist upon the proof of it. (*Piggott and Walsh*, JJ.) SURENDRANATH MUKERJEE *v.* EMPEROR. **19 Cr. L J. 935 = 47 I.C. 639 = 16 A.L J. 478.**

——Ss. 25, 26—Panchnamas—*Admissibility—Record of accused's conduct—Statement in consequence of which nothing was discovered.*

Courts should exclude from the record *Panchnamas* which contain statements by an accused person which are clearly inadmissible or which are of doubtful admissibility. (*Chandavarkar and Heaton*, JJ.) EMPEROR *v.* RANCHHOD GOKAL. **12 Cr. L.J. 429 = 11 I.C. 613 = 13 Bom. L R. 499.**

——S. 25—*Statements to Police officers—The evidence of Police officers as to statements made to them by certain persons is inadmissible.*

Statements made to the investigating Police officer by a relative of a person whose property was stolen, can however be used to contradict or corroborate the statement made by him in the Court of the Magistrate. (*Teunon and Ghose*, JJ.) ASHUTOSH *v.* EMPEROR. **66 I.C. 513 = 34 C L J. 53.**

——S. 25—*Information given by accused himself.*

The accused gave the first information about the murder on the morning following the murder, and after stating the narrative prior to the night of occurrence, confessed his crime. *Held*, that the first information was not entirely admissible, by virtue of S. 25, yet it was admissible, when proved, as regards the events prior to the night of occurrence. (*Teunon and Ghose*, JJ.) SUPERINTENDENT AND LEGAL REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* LALIT MOHAN SINGHA ROY. **22 Cr. L.J. 532 = 62 I.C. 578 = 23 C.W.N. 788.**

——S. 25—*Admissions and confessions.*

S. 25 excludes only confessions and not every statement made to the police by the accused. There is a distinction between admissions and confessions. The test as to the admissibility of statements made to the police is to ascertain the purpose for which they are used by the prosecution. Such statements are admissible if they are relied on. (*Woodroffe and Mookerjee*, JJ.) EMPEROR *v.* KANGAL MALI. **15 Cr. L.J. 713 = 26 I.C. 161 = 41 Cal 601.**

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——Ss. 25 and 26—*Statement by accused in presence of excise officers—Admissibility.*

A statement by an accused arrested on a charge of unlawful possession of opium to excise officers, the police servants remaining in a room in another part of the house, is still a statement made while in Police custody and therefore inadmissible. (*Teunon and Choudhury*, JJ.) MUHAMMAD IBRAHIM *v.* EMPEROR. **18 Cr. L.J. 609 = 39 I.C. 977 = 21 C.W.N. 694.**

——S. 25—*Repetition of previous statement before Police officer—Scope.*

An incriminating statement was made to a witness in the absence of the police and subsequently repeated before him and the Police officer: *Held*, the confession is undoubtedly admissible but the weight to be given to it is a matter for consideration. (*Broadway*, J.) WADHAWA SINGH *v.* EMPEROR. **1923 Lah. 389 (2).**

——S. 25—*Confession to police can be used to contradict judicial confession.*

All that S. 25 lays down is that a confession to the police shall not be used as against a person making it. It does not lay down that such a confession shall be inadmissible for all purposes. The confession to the police may be used for the purpose of arriving at a conclusion as to whether a subsequent judicial confession should be believed or not. (*Scott-Smith and Zafar Ali*, JJ.) GULAB *v.* EMPEROR. **1923 Lah. 315.**

——S. 25—*Report of confession before police.*

A report made to police amounting to a confession is not admissible in evidence against the person who makes it. (*Scott-Smith and Brodway*, JJ.) SIKANDAR *v.* EMPEROR. **20 Cr. L.J. 83 = 48 I.C. 883 = 36 P.R. 1918, Cr.**

——Ss. 25, 17, 19 and 21—*Admissibility of confession to police in Civil suit.*

Admissions of guilt by one of the defts. in a suit, to a Police officer though not receiveable in evidence in a criminal trial, may be proved in Civil proceedings under Ss. 17, 18 and 21. (*Rattigan and Leslie Jones*, JJ.) BISHEN DAS *v.* RAM LABHAYA. **105 P.W.R. 1915 = 32 I.C. 18 = 187 P.W.R. 1915.**

——Ss. 25, 26—*Confession of accused while in custody of jailor—Admissibility.*

A confession of the accused while in the custody of the jailor and a police officer does not fall under S. 26 or S. 25 and so is admissible in evidence. 20 Bom. 795, Foll. (*Kensington*, C.J. *and Shah Din*, J.) NADIR *v.* EMPEROR. **21 P.L.R. 1914 = 24 I.C. 568 = 15 Cr. L.J. 480 = 8 P.R. 1914 Cr.**

——S. 25—*Confession in presence of Police—Admissibility of.*

If an accused person makes a confession to a private person in presence of the police it

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cannot be admitted in evidence against him. (*Rattigan*, J.) CHAMAN *v.* EMPEROR.
320 P.L.R. 1913 = 21 I.C. 468 = 14 Cr. L.J. 596 = 37 P.W.R. 1913 Cr.

——— S. 25—*Statements against accused—Admissibility.*

A confession or statement which is inadmissible against the person making it, is inadmissible against a person implicated by it. Previous statements of an approver to the police are inadmissible against the accused under S. 25 of the Act. Per *Miller and Abdur Rahim*, JJ.—The confession that is excluded by S. 25 is only the confession of a person charged with the offence. (*Benson, Wallis, Miller and Sundara Aiyar*, JJ.) MUTHUKUMARASWAMI PILLAI *v.* EMPEROR.
35 Mad. 397 = 13 Cr. L.J. 352 = (1912) M.W.N. 849 = 14 I.C. 896 = 12 M.L.T. 1 (F.B.).

——— S. 25 — *Statement of approver to Police—Admissibility.*

The statements of approver to a Police Inspector being really confessions, are inadmissible against the accused under S. 25 of the Evidence Act. (*White*, C.J. *and Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILAKANTA.
35 Mad. 247 = (1912) M.W.N. 207 = 13 Cr. L.J. 305 = 22 M.L.J. 490 = 14 I.C. 849 = 11 M.L.T. 1 Spp. (S.B.).

——— S. 25—*Admissibility of.*

Confession made to police officer is admissible to prove the ownership of property regarding which he is charged. (*Drake Brockman*, J.C.) GANPAT *v.* BANI. 56 I.C. 62 = 21 Cr. L.J. 414.

——— S. 25—*Information by accused to Police Officer—Admission by accused of his guilt before Sub-Inspector—Admissibility.*

An admission made by the accused of his guilt before a Sub-Inspector of Police is not admissible in evidence. (*Lindsay*, J.C. and *Stuart*, A.J.C.) MALIK HUSAIN *v.* EMPEROR.
15 Cr. L.J. 474 = 24 I.C. 562 = 1 O.L.J. 163.

——— S. 25—*Confession—Meaning — Statement suggesting inference of guilt—Whether a confession.*

The word confession in S. 25 is not restricted to actual admissions of guilt but includes inculpatory statements from which inferences of guilt can reasonably be drawn or which suggest the guilt of the person making the statement. (*Fox*, C.J. *and Ormond*, J.) PAN GANG *v.* EMPEROR. 42 I.C. 1002 = 19 Cr. L.J. 42.

——— S. 25—*Admission before Police—Relevancy.*

An admission made by the accused to the Police is inadmissible against him under S. 25. (*Twomey*, J.) NGA THA KU. *v.* EMPEROR.
17 Cr. L.J. 51 = 36 I.C. 480 = 10 Bur. L.T. 121.

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——— Ss. 25 and 30—*Confession to Police—Admission by a person before he was accused of an offence—Admissibility.*

Accused was convicted on the evidence of two excise Sub-Inspectors who stated that he offered them Rs. 10 per ball of opium as a bribe to let him land from a steamer unmolested. *Held* that the alleged offer by the accused amounted to an admission that he had a large quantity of contraband opium in his possession and being an admission of an offence under the Opium Act, was therefore a confession and was thus inadmissible under S. 25 of the Evidence Act. The test, which has to be applied in deciding whether S. 25, Evidence Act, applies, is the position of the person at the time when it is proposed to prove the admission and not his position at the time when he is alleged to have made it. A confession therefore made to a police officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. A confession made by an accused person to a police officer might be admissible in favour of a co-accused but not against him. (*Twomey*, J.) SAN PAW AUNG *v.* EMPEROR.
13 Cr. L.J. 465 = 15 I.C. 305 = 5 Bur. L.T. 92.

——— S. 25—*Scope.*

S. 25 only provides that a confession made to a police officer shall not be proved against the accused. Such confession is admissible in evidence on behalf of another co-accused, (*Parlett*, J.) EBRAHIM *v.* EMPEROR.
12 Cr. L.J. 79 = 9 I.C. 449 = 4 Bur. L.T. 9.

——— Ss. 25 and 26—*Confession by way of explanation.*

A statement made by an accused person to a police officer by way of an explanation in order to exculpate himself is admissible in evidence. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* AKHTIAR. 14 Cr. L.J. 252 = 19 I.C. 508 = 6 S.L.R. 143.

——— Ss. 26 and 30—*Confession—Admissibility.*

Where the circumstances of the case compel a tribunal to act only upon a confession, and to reject all other evidence, the confession must be used *Literatim et Verbatim*, and due effect must be given to every statement in it whether in favour of the accused or against him. (*Walsh and Stuart*, JJ.) JAGDEO *v.* EMPEROR. 18 Cr. L.J. 356 = 38 I.C. 740 = 15 A.L.J. 15.

——— S. 26—*Confession—Accused in the custody of the Police—Extra Judicial confession.*

The accused who was in the look up of the Magistrate under trial was sent up by the Magistrate to a hospital for treatment with two police men in charge. The latter waited outside in the verandah. During his examination inside the dispensary by the doctor, the accused made a confession within the hearing

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of the doctor. *Held*, that it was excluded by S. 26 as the accused was in police custody up to his arrival at the hospital and remained in that custody. 20 Bom. 795, Dist. Police Officers referred to in S. 26 need not be investigating police officers. (*Batchelor and Shah*, JJ.) EMPEROR *v.* MALLAN GOWDA. **42 Bom. 1 = 18 Cr. L.J. 981 = 42 I.C. 597 = 19 Bom. L.R. 683.**

———S. 26— *Police patel—Confession—Inadmissible.*

A confession to Police Patel would clearly be invalid. (*Batchelor and Hayward*, JJ.) EMPEROR *v.* RAMA DHAN POWAR. **16 Cr. L J. 740 = 31 I.C. 340 = 17 Bom. L.R. 898.**

———S. 26—*Confession before police—Not to be allowed to go in evidence.*

A police officer when giving evidence has been improperly allowed to state that an admission of guilt was made by the accused. (*Holmwood and Chatterjee*, JJ.) PAIMULLAH *v.* EMPEROR. **13 Cr. L.J. 127 = 13 I.C. 783 = 16 C.W.N. 238.**

———S. 26—*Confession—Oral—Admissibility.*

A confession to be admissible in evidence need not be recorded. It may be oral. It is a relevant fact and may be proved by the Magistrate to whom the oral confession was made. (*Scott-Smith and Shadi Lal*, JJ.) FEROZ *v.* EMPEROR. **19 Cr. L.J. 651 = 45 I.C. 843 = 11 P.R. 1918 Cr.**

———Ss. 26, 27 and 30—*Statement made in police custody and before Magistrate—Admissibility—Co accused—Record of statement.*

Any incriminating statement made in writing by accused while in police custody whether amounting to confession or not, is not admissible either against him or against a person jointly tried with him, unless such statement has led to the discovery of any fact mentioned in S. 27 of the Evidence Act. Any deposition recorded by a Magistrate on solemn affirmation can be admitted only against the deponent and not against a co-accused and record of the statement made by Magistrate in a case he subsequently commits to the Sessions, must be in the form laid down in S. 464, Cr. P. Code and any defect in it can be cured by actual evidence of the Magistrate. A confession of an accused is not admissible against co-accused under S. 30 of Evidence Act if the former is convicted on his plea of guilty. 5 C. 954; 5 A. 253, Ref. A plea of guilty can be allowed to be withdrawn if the accused was at the time of making it, enfeebled by illness and was undefended. (*Reid*, C.J. *and Rattigan*, J.) CROWN *v.* SHULDAM. **22 P.L.R. 1916 = 28 I.C. 145 = 16 Cr. L.J. 257 = 44 P.W.R. 1914 Cr.**

———S. 26—*Confession while in police custody.*

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A confession while in police custody is of little value. (*Johnstone and Beadon*, JJ.) FATIMA *v.* EMPEROR. **10 P.R. 1914 Cr. = 23 I.C. 525 = 13 Cr. L.J. 613 = 261 P.L.R. 1914.**

———S. 26—*Confession by accused—Admissibility of evidence of proof.*

Evidence to prove a confession made while an accused person is in police custody is inadmissible. A confession, though made in the presence of a Magistrate is of very little value when the accused is not aware of his presence. A confession made in the presence of a Magistrate though on leave, is nevertheless relevant and admissible. (*Reid*, C.J. *and Rattigan*, J.) FAIZULLAH *v.* EMPEROR. **38 P.L.R. 1914 = 22 I.C. 150 = 15 Cr. L J. 6 = 8 P.W.R. 1914 Cr.**

———Ss. 26 and 27—*Statement of accused while in custody of police.*

A statement of the accused while in custody of the police as to the commission of the crime is inadmissible but a statement by him as to the stolen property being found in a certain place, is admissible. 31 M. 127, Foll. (*Sadasiva Aiyar*, J.) MANJUNATHAYA *v.* EMPEROR. **15 Cr. L.J. 533 = 24 I.C. 845 = 26 M.L.J. 352.**

———Ss. 26, 74 and 80—*Magistrate includes one in Native State.*

The word Magistrate in S. 26 of the Evidence Act includes Magistrate, in Native State and a confession made before such a Magistrate is admissible in evidence certainly under S. 74 as against the person by whom they were made. (*Hallifax and Macnair*, A.J.Cs.) GOVIND, *v.* EMPEROR. **23 Cr. L.J. 673 = 69 I C. 257 = 17 N.L.R. 113.**

———S. 26—*Confession made to a person in the presence of a police officer—Admissibility of.*

An accused's confession to some person other than a police officer is admissible in evidence. (*Lindsay*, J.C.) DAL *v.* EMPEROR. **16 Cr. L.J. 62 = 26 I.C. 654 = 1 O L J. 687.**

———S. 27—*Confession to police—Use of.*

In a criminal trial when direct evidence is supplied against the accused then comes the lawful utility of a confession to the police. The defence, under these circumstances, can examine, for instance, an approver's story. It is according to S. 27 of the Evidence Act information that points out and leads to the discovery. (*Walsh*, J.) SUBEDAR *v.* EMPEROR. **L.R. 4 A. 210 (Cr.) = 1924 All. 207.**

———S. 27—*Information not leading to discovery.*

Statements leading immediately to the discovery of property are properly admissible. Other statements connected with the one thus made and immediately, but not necessarily or directly connected with the fact discovered are not admissible. 11 B. H. C.R. 242, Rel. A person accused under S. 323, I.P.C. pointed

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out during the police investigation a *Dhatura* tree and said that he had taken the fruit of it. The statement was inadmissible. (*Knox*, J.) EMPEROR *v.* PANCHU. **17 Cr. L J. 8 = 32 I.C. 136 = 13 A.L J. 1077.**

——S. 27—*Information not leading to discovery.*

Where the finding of a corpse was due not to anything that the accused had said but to his conduct in pointing out that place, a record of the accused's conduct is admissible in evidence. But statements of the accused in consequence of which nothing was discovered should not be admitted in evidence. (*Chandavarkar and Heaton*, JJ.) EMPEROR *v.* RANCHHOD GOKAL. **12 Cr. L.J. 423 = 11 I C. 613 = 13 Bom. L.R. 499.**

——S. 27—*Discovery, meaning of.*

The discovery referred to in S. 27 means discovery to or by Police officers and facts already known to persons other than police officers may be said to be discovered in consequence of information received. (*Teunon and Ghose*, JJ.) SUPERINTENDENT AND LEGAL REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v* LALIT MOHAN SINGH ROY. **22 Cr, L.J. 562 = 62 I.C. 578 = 25 C.W.N. 788.**

——Ss. 27 and 26, 25 and 24—*Discovery in pursuance of confession— Police officer—Admissibility of statement.*

When a confession as a whole is excluded whether by reason of S. 26 or 25 or 24, so much of the information, given by the person making the confession when the accused was in custody, as distinctly relates to a relevant act thereby discovered, becomes admissible. When the accused himself produced the articles said to be discovered, so much of the information as set the police in motion and led to the discovery is admissible. Per *Huda*, J.—Under S. 27 only so much of the information, whether amounting to a confession or not, as relates distinctly to the fact thereby discovered may be proved. Even if a single statement contains more information than what is contemplated in S. 24, the statement is not to go in as a whole nor is it to go in as a statement at all, but what is admissible is the particular information given by the statement which led to the discovery. S. 27 of the Evidence Act, qualifies not only Ss. 25 and 26 but also S. 24, all three of which lay down general rules excluding confessions and the same broad grounds underlies all the three. (*Teunon and Huda*, JJ.) AMIRUDDIN *v.* EMPEROR. **45 Cal. 557 = 22 C W N. 213 = 44 I.C. 321 = 19 Cr. L.J. 305 = 27 C.L.J. 148.**

——S. 27—*Scope.*

If the recoveries were made in consequence of information supplied by the accused, the statements made by them are admissible under S. 27 of the Indian Evidence Act. (*Moti Sagar*, J). ALI AHMED *v.* EMPEROR. **1923 Lah. 424.**

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——S. 27—*Information by accused—Discovery—Arms Act, S. 20.*

Petitioner was neither accused nor in custody when he gave information which led to the discovery of a title. One of the prosecution witnesses deposed that the petitioner said where the rifle had been buried, the other deposed that he said "I buried it." *Held*, in the absence of any other evidence of possession by the petitioner, it cannot be presumed that because he knew where the rifle was, he had concealed it himself. (*Campbell*, J.) KHUDA BAKHSH *v.* EMPEROR. **1923 Lah. 238 (2).**

——S. 27—*Confession after discovery of property not admissible.*

Where property had been dug out by some of the accused and subsequently another suspected person is made to point out the same place, his evidence does not come within S. 27 of the Evidence Act. Once property has been discovered in consequence of information received from a suspected person it cannot be rediscovered in consequence of information received from another suspected person. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of the section. (*Scott-Smith*, J.) BUDHA *v.* EMPEROR. **9 P.L.R. 1922 = 23 Cr. L.J. 22 = 1922 Lah. 315.**

——S. 27—*Confession—Statement as to burial of dead body.*

On a trial for murder, a witness stated that the accused offered to point out the place where the dead body was and on being questioned as to who had buried the body he said that he (accused) had done so. *Held*, that the accused's statement that he buried the body was not admissible in evidence. 14 B. 260; 24 P.W.R. 1916; 50 P.W.R. 1915 Cr., Dist. (*Scott-Smith and Wilberforce*, JJ.) EMPEROR *v.* TUREZI, **55 I.C. 685 = 21 Cr. L.J. 349.**

——S. 27—*Information given by accused—Discovery.*

Where there is immediate connection between discovery and statement made to a police officer, the latter is admissible in evidence. (*Chevis and Leslie Jones*, JJ.) KAPUR SINGH *v.* EMPEROR. **20 Cr. L.J. 305 = 50 I.C. 481 = 98 P.L.R. 1918.**

——S. 27—*Admissions—Admissibility in evidence under S. 27.*

It is legitimate to record evidence that an accused person said "I will point out certain property" if such statement leads to a discovery; but it is not legitimate to record as an evidence that an accused said "I will point out certain property which I obtained as my share of the booty in the dacoity." (*Leslie Jones*, J.) GURDIT SINGH *v* EMPEROR. **52 P.L.R. 1918 = 9 P.W.R. 1918 Cr. = 44 I.C. 961 = 19 C L.J. 439.**

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——— S. 27 —*Information leading to discovery —Hiding place not his own.*

Though a person points out a place not his own where stolen property is concealed, the Court should not conclude that the person had received or retained it. (17 A. 576; 20 P.R. 1905 Cr., R.) The mere knowledge of the place of concealment does not show that the person having such knowledge actually received the stolen articles or participated in the act of concealment. (*Chevis and Shadi Lal, JJ.*) EMPEROR *v.* BUTA SINGH **18 Cr. L.J 490 = 39 I.C. 330 = 1 P.R. 1917 Cr.**

———S 27 —*First information.*

Where two or more persons are alleged to have given certain information to the police which led to the arrest of the accused, it is only the information given first which is admissible under S. 27 of the Evidence Act. 6 All. 509, Foll. (*Leslie Jones, J.*) RAM SINGH *v.* EMPEROR. **7 P.R. 1916 (Cr) = 34 I.C. 993 = 17 Cr. L.J 273 = 35 P.W.R. 1916 (Cr).**

———S 27—*Discovery as a result of a statement of the accused—Statement, admissibility of.*

A statement is admissible in evidence under S. 27 when as a consequence of it, there is a discovery incriminating the person making the statement. (*Scott Smith and Shadi Lal, JJ.*) ISHER SINGH *v.* EMPEROR **72 P.L.R. 1916 = 24 P.W.R. 1916 Cr = 17 Cr. L J 183 = 33 I.C. 823 = 50 P.W.R. 1916 Cr.**

——— S. 27 — *Confession — Information received from accused—How far relevant.*

Where an accused made a statement to the police that he would point out the spot where he had committed the murder and thereafter he conducted the police to the spot where earth was found saturated with blood, *held*, that so much of the Police Sub-Inspector's evidence as related to the alleged confession by the accused that he committed the murder, was not admissible in evidence. (*Kensington, C.J. and Rattigan, J.*) TARA SINGH *v.* EMPEROR. **16 Cr. L.J. 545 = 11 P.R. 1915 Cr. = 29 I.C. 817 = 61 P.W.R. 1915 Cr.**

——— S. 27—*Joint discovery—Track evidence.*

Track evidence is of no value if the comparison is made 8 or 9 days after the affairs. Where more than one accused person in custody of the police point out this or produce that jointly, such an evidence of joint discovery is not sufficient for a conviction. 3 I.C. 622, Foll. (*Johnstone, J.*) PATHANA *v.* EMPEROR. **9 P.W.R. 1914 Cr. = 24 I.C. 587 = 15 Cr. L J. 499 = 63 P L.R. 1914.**

——— S. 27 — *Incriminating statement — Production of articles—Police custody.*

Where there is practically no evidence at all against an accused except an incriminating statement under S. 27, the latter should be viewed with great caution and suspicion. The statement of an accused that he buried the weapon in a certain place is relevant but not the part of the statement that it was the weapon with which he had committed the crime. If the accused produced the article himself, the fact that he produced it at a particular place may be proved, but the accompanying statement that he buried it there is inadmissible. The statement of the accused that he could point out a spot and that blood-stains would be found there is admissible but not that it was at that spot that he committed the crime. (*Reid and Rattigan, JJ.*) SANTA SINGH *v.* EMPEROR. **14 Cr. L J. 190 = 15 P.W.R. 1913 Cr = 19 I.C. 190 = 171 P.L R. 1913.**

——— S. 27 —*Applicability—Place already discovered.*

When a material fact has already been discovered, the accused's statement while in police custody relating thereto, is not admissible under S. 27. (*Williams, J.*) MANNA *v.* EMPEROR. **12 Cr. L.J. 35 = 9 I.C. 232 = 3 P.W.R. 1911 Cr.**

——— S. 27 —*Statement of accused—Extent to which relevant.*

A statement made by an accused may be proved under S. 27 of the Act, so far as it relates to any material facts discovered in consequence, even though the police were present when the statement was made. (*Spencer, J.*) NAINAMALAI KONAN, *In re.* **28 Cr. L.J. 697 = 69 I C. 377 = 14 L.W. 418.**

——— Ss. 27, 30 and 114—*Information by accused—Retracted confession—Corroboration.*

To bring an information by accused under S. 27, the information must have had the direct effect of leading to the discovery of the stolen property. Unless a confession is corroborated in material particulars and by independent testimony, it should not be the basis of a conviction. (*Seshagiri Iyer and Moore, JJ.*) RAMASWAMI BOYAN *v.* EMPEROR. **21 Cr. L.J. 79 = 54 I.C. 479 = 11 L.W. 8.**

——— Ss. 27 and 30—*Confession—Duty of prosecution to adduce independent evidence—Trial for murder.*

Per *Lyle*, A.J.C.—Although criminals do at times confess for no apparent reason, they generally do so in some vague hope of escaping from the penalty of their crime when they know or believe there is evidence. Per *Ashworth*, A.J.C.—When an accused person has pointed out the whereabouts of the body of a man who has undoubtedly been murdered and has made a confession which not only is uncontradicted by any of the facts proved in the case but indeed receives corroboration in respect of many points then the confession should be held to be true as implicating the person making it, unless he can make out a story to the contrary. It is not necessary that the confession of an accused should receive direct corroboration as to the

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fact that the accused was concerned in the offence. It is sufficient that there is such corroboration of the confession as to indicate that the accused had such knowledge of the circumstances of the offence as would suggest his taking part in it. (*Kanhaiya Lal*, J.C., *Lyle and Ashworth*, A.J Cs.) HIGA *v.* EMPEROR.
4 U.P.L R. (O,C) 50=9 O.L J. 190=23 Cr. L.J. 481=1922 Oudh 202.

——S. 27—*Confession not leading to discovery of anything.*

When a person accused of murder offered to show to the police the scene of the murder and the place where the deceased's things lie concealed, both of which had already been disclosed by an accomplice. *Held*, that the conduct of the accused in this respect was inadmissible in evidence against him. (*Fox*, C.J. *and Ormond*, J.) PAN GANG *v.* EMPEROR,
42 I.C. 1002=19 Cr. L.J. 42.

——S. 27—*Confession—Inducement from person in authority.*

A confession which appears to have been caused by some inducement from some person in authority is inadmissible in evidence. (*Parlett*, J.) SHWE HMON *v.* EMPEROR.
14 Cr. L.J. 417=20 I.C. 401=6 Bur. L.T. 109.

—— S. 27—*Information given by accused leading to discovery—Statement of co-accused—Admissibility of—Police* mashirnamah.

Information by two persons which leads to the discovery of a fact is relevant and so much of the statement of each which relates to the fact discovered is admissible against both; statements of co-accused after the discovery are irrelevant. 24 W.R. Cr. 36, Ref. After one accused has made a discovery the other should not be asked to do the same. 2 Bom. L.R. 1089, Ref. Police *mashirnamahs* are always very important as a contemporaneous record of events occurring in the investigation and they should generally be exhibited with the exception of irrelevant parts. (*Pratt*, J.C. *and Crouch*, A.J.C.) SULEMAN *v.* EMPEROR.
17 Cr. L J. 506=34 I.C. 674=10 S.L.R. 7.

——S. 27—*Statement after discovery—Pointing out property—Value of.*

A statement by accused not leading to discovery of property but made after discovery and production of the property is irrelevant. The production or the pointing out may indicate that the accused was in possession or that he had innocent knowledge that the articles had been left there by some one else. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* PHOTO.
13 Cr.L.J. 519=15 I.C. 801=5 S.L.R. 257.

——S. 27—*Applicability.*

S. 27 is a proviso to Ss. 24, 25 and 26. 31 A. 592, Foll. Statement made to the police is admissible though the accused himself makes the discovery about which the statement is made. Confession to person in authority who holds out inducements to confess is not admissible

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even so far as it relates to the discovery of articles if the accused was not in police custody. (*Hayward*, J.C. *and Legatt*, A.J.C.) IMPERATOR *v.* DABUD.
12 Cr. L J. 119=9 I.C. 718=4 S.L.R. 209.

——S. 28—*Confession made while in immediate vicinity of police.*

A confession by an accused in police detention as a suspect made in the immediate vicinity of the police, to a Zaildar could not be proved unless made to a Magistrate though the accused may not have been handicapped, as, to all intents and purposes he was in police custody. (*Johnstone*, C.J. *and Chevis*, J.) KARAM SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr.=17 Cr. L J. 226=153 P.L.R. 1916=34 I.C. 642=26 P.R. 1916 Cr.

——S. 28—*Confession to Magistrate soon after inducement by person in authority.*

Confessions to the Magistrate made soon after inducements held out by certain Zamindars sent by the police, are inadmissible as there is nothing to show that the impression caused by the inducement held out by the Zamindars had been removed so as to make the confession admissible under S. 28. (*Hayward*, J.C. *and Leggatt*, A.J.C.) IMPERATOR *v.* DABUD.
12 Cr. L J. 119=9 I.C. 718=4 S.L.R. 209.

——S. 30.

CONFESSION—ADMISSIBILITY.
CONFESSION—CORROBORATION.
CONFESSION—EVIDENTIARY VALUE.
JOINT TRIAL—MEANING OF.
PLEA OF GUILTY.
RETRACTED CONFESSION.
SELF-EXCULPATORY STATEMENT.

Confession, Admissibility.

——S. 30—*Confession — Admissibility — Co-accused—Admissibility of confession—Mode of proof.*

Where an accused person after he is arrested makes a confession implicating the other accused and the confession is sought to be used against them, it is incumbent on the prosecution to disclose the name of the officer who made the arrest and produce him or any other person who could speak to the circumstances under which the confession was made so as to enable the defence to ascertain by cross-examination what inducements were offered to the accused to make it and what generally were the circumstances that attended the confession. (*Lord Atkinson*). VAITHINATHA PILLAI *v.* EMPEROR.
36 M 501=17 C.W.N. 1110=14 M.L,T. 263=25 M.L.J. 518=11 A.L.J. 881=18 C L J. 365=(1913) M.W.N. 806=14 Cr.L J. 577=15 Bom. L.R. 910=21 I.C. 369=40 I.A. 193 (P.C.).

——S. 30—*Confession — Admissibility—Co-accused.*

In a criminal trial it is the duty of the prosecution to prove all relevant facts essential to

EVIDENCE ACT (I of 1872), S. 30—Confession —Admissibility.

establish the guilt of an accused person. A statement made under S. 364, Cr. P. C., by a thief in his own defence is not admissible against another person charged with being the receiver of stolen property. The expression "proving a confession" is inapplicable to the questions and answers under S. 364, Cr. P. Code. (*Walsh*, J.) MAHADEO PRASAD *v.* EMPEROR. **45 A. 323=21 A L.J. 179= L.R 4 A 57 (Cr.)= 1923 All. 322.**

———S. 30—*Confession—Admissbility.*

Statements made by one accused against co-accused are admissible if the requirement of S. 30 of Evidence Act are fulfilled. (*Ryves*, J.) RAMHIT *v.* EMPEROR. **20 A L J 178= 23 Cr. L.J. 193=1922 A. 24.**

———S. 30—*Confession—Admissibility—Joint trial.*

During the joint trial of several persons, one of them made a statement confessing his guilt and implicating some of the other accused. *Held*, that the confessing accused was tried jointly with the other accused and the confession could be considered along with other evidence against all the accused. (*Chamier and Piggott*, JJ.) EMPEROR *v.* DIP NARAIN. **13 A.L.J. 337=28 I C 663= 16 Cr. L.J. 327=37 All. 247.**

———S. 30 — *Confession — Admissibility against co-accused in proceedings under S. 110 of the Cr. P. Code.*

The confession of an accused in a dacoity case is not admissible in evidence against a co-accused in that case in a proceeding under S. 110 of the Cr. P. Code (*Sanderson*, C.J. *and Mookerjee*, J.) MAFIZUDDIN KHAN *v.* EMPEROR. **25 C.W N. 219=61 I C. 793= 22 Cr. L.J. 441=33 C.L J. 70.**

———S. 30—*Confession — Admissibility—Statement of accused after arrest—Not amounting to confession.*

The statement of an accused made after arrest and not amounting to a confession is not admissible in evidence against a co-accused either under S. 10 or S 33, but only against himself. The admission does not however affect the conviction when no stress was laid on such statement by the lower Courts. 38 Cal. 169, Foll. (*Teunon and Cuming*, JJ.) SITAL SINGH *v.* EMPEROR. **46 Cal 710= 21 Cr.L J. 5=54 I C. 53=30 C.L.J 255.**

———Ss. 30 and 24 — *Confession—Admissibility.*

A confession to be admissible in evidence under S. 30 must be relevant under S. 24 of the Evidence Act. K as a witness in N's trial made a statement implicating himself and V.K. was then added as a co-accused. It was held that K's statement was relevant under S. 30 as it was a confession made by a co-accused, K. being a co-accused when his statement was

EVIDENCE ACT (I of 1872), S. 30—Confession —Admissibility.

used. (*Reid*, C.J. *and Johnstone*, J.) EMPEROR *v.* UMDA. **9 P.R. 1911 Cr.= 22 P.W.R. 1911 Cr =10 I C 340= 12 Cr. L.J. 267=166 P.L.R. 1911.**

———S. 30—*Confession— Admissibility — Trial of a number of accused before the Magistrate—Plea of guilty by some after implicating all—Joint trial—Admissibility of confession by accused pleading guilty.*

Where in a trial of several persons when the prosecution evidence was concluded and the accused were asked to enter upon their defence, two of the accused pleaded guilty and in doing so impleaded the others and all of them were tried together, the statement of the two can be admissible for convicting the others. (*Ayling*, J.) *In re* VEMPALLI BALI REDDY. **14 M.L.T. 453=22 I C. 157= 15 Cr. L.J. 13=38 Mad 302.**

———S. 30—*Confession—Admissibility.*

A statement of an accused must amount to a confession before it can be considered against his co-accused under S. 30 of the Act. (*White*, C.J , *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILKANTA. **(1912) M.W.N 207=35 Mad. 247= 13 Cr. L J. 301=22 M.L.J. 490= 14 I.C. 849=11 M.L.T. 1 (Supp.) (S B.).**

———S 30 — *Confession— Admissibility—Co-accused.*

S. 30 of the Evidence Act does not say that the confession referred to therein is relevant but only says that the Court may take it into consideration against the co-accused. The Court might take into consideration such confession with or supplementary to relevant facts which may form the basis of a judgment. 38 C. 559, Ref. As a matter of judicial prudence a confession implicating others must be regarded with suspicion. (*Hallifax, Prideaux and Kotwal*, A.J.Cs.) SAPKU *v.* EMPEROR. **23 Cr. L J. 129=1922 Nag. 146.**

———S. 30—*Confession — Admissibility—Confession made before Magistrate in Native State—If can be used against co-accused.*

Confessions recorded in the manner provided by the Cr. P. Code, even though made to Magistrates outside British India, if proved against the persons who made them, may be taken into consideration against others who are being tried jointly for the same offence. (*Hallifax and Macnair*, A.J.Cs.) GOVINDA *v* EMPEROR. **23 Cr. L.J. 673=69 I C. 257= 17 N.L.R. 113.**

———S. 30—*Confession—Admissibility—Co-accused.*

It is not the law that unless a confessing prisoner implicates himself as fully as his co-accused, the statement will not be admissible, the principle being there is no guarantee that the maker of the confession is speaking the truth. All that is required is that the confession shall substantially implicate its maker in regard to

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the crime with which he and his co-accused are charged. It is not necessary that there should be an admission of actual guilt. The admission may establish constructive guilt. S. 30 of the Evidence Act applies to confessions made to the residents of the same village as the accused. *Mullick and Becknil*, JJ.) SUKA RAUT *v.* EMPEROR. **75 I.C. 705=4 P.L.T. 505.**

———**S. 30** — *Confession—Admissibility—Meaning of co-accused.*

Where a co-accused made a statement in gaol to the S.D.O. that he was being tortured to make confession and subsequently made confession implicating himself and the other accused and pardon under S. 357 was tendered and the case against him withdrawn under S. 495, Cr. P. Code *Held*, he is not a co-accused though examined as a prosecution witness. (*Jwala Prasad*, J.) SHEOBHAJARIN *v.* KING-EMPEROR. **2 P L.T. 125.**

Confession—Corroboration.

———**S. 30**—*Confession — Corroboration—Necessity.*

Per *Scott*, C.J. *and Heaton*, J.—The rule is that a man is not to be convicted solely on the confessions of co-accused and it follows that he must not be convicted on such confessions together with evidence of the ordinary kind which is trivial or unimportant. Where however there is, apart from the confessions, a body of evidence and circumstances enough to support a conviction, if the evidence is accepted as free from untruth or exaggeration or serious mistake or distortion, the Court can take the confessions into consideration and consider together the evidence, the circumstances and the confessions. The material should not be divided into parts. Where the confession of a co-accused is corroborated, it matters not whether on proving the case at the trial, the confession precedes the other evidence or *vice versa*. There is no rule as to what would constitute sufficient independent corroboration in a particular case. The evidence which is supposed to afford independent corroboration must be in itself reliable ; otherwise it will not be independent corroboration. The value of the confessions of an accused, against a co-accused when those confessions are retracted at the trial, is very low. (*Scott*, C.J., *Heaton and Shah*, JJ.) EMPEROR *v.* SABIT KHAN.
43 Bom 739=20 Cr. L.J 497=51 I.C. 651=21 Bom. L.R. 448.

———**S. 30**—*Confession — Corroboration—Co-accused—Weight due to.*

The confession of a co-accused can be taken into consideration but the Court requires corroboration before acting upon such a confession. Where the corroboration consisted of statements of witnesses which though giving rise to suspicion, were consistent with the innocence of the accused. *Held*, that the corroboration fell far

EVIDENCE ACT (I of 1872), S. 30—Confession—Evidentiary value.

short of what is required to support a conviction. (*Fletcher and Beachcroft*, JJ.) EMPEROR *v.* BABUR ALI. **42 Cal. 789=19 C.W.N. 584=16 Cr. L.J. 321=28 I.C. 657=21 O.L.J. 492.**

———**Ss. 30, 114, illus. (b) and 133**—*Confession—Corroboration.*

On a proper consideration of S. 114, illus. (*b*) where there are more than one accused person there must be corroboration against each of them showing his connection with the offence, if the accomplice's evidence is to be acted upon. (*Johnstone*, C.J. *and Smith*, J.) NIKKA *v.* EMPEROR. **17 Cr. L.J. 156=33 I.C. 636=19 P.W.R. 1916 Cr.**

———**S. 30**—*Confessions by co-accused—Corroboration—Conviction corroboration necessary.*

A conviction based entirely on statements contained in confessions of co-accused persons, is not sustainable. (*Ormond*, J.) NGA PO KYA *v.* EMPEROR. **12 Cr. L.J. 463=11 I.C. 1001=4 Bur. L.T. 189.**

Confession—Evidentiary value.

———**S. 30**—*Confession—Evidentiary value—Probative value of a co-accused's evidence.*

The true effect of S. 30 is that the Court can only treat a confession as lending assurance to other evidence against a co-accused. A conviction on the confession of a co-accused alone would be bad in law. A retracted confession should not be relied upon. (*Jenkins*, C.J., *Brett and Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. **38 Cal. 559=12 Cr. L.J. 286=10 I.C. 582=15 C.W.N. 593.**

———**S. 30**—*Confession—Evidentiary value—Test of admissibility.*

Whether the confession of an accused can be used against his co-accused should be determined on seeing whether the accused can be convicted on that confession of the crime with which he and the co-accused were charged. (*Shadi Lal*, C.J. *and Wilberforce*, J.) CHUNNI LAL *v.* EMPEROR. **60 I.C. 660=22 Cr. L.J. 260.**

———**S. 30**—*Confession—Evidentiary value—Value of.*

The confession of a co-accused must be corroborated by independent evidence in some material circumstances so as to justify a conviction. (*Shadi Lal*, C.J. *and Leslie-Jones*, J.) KEHR SINGH *v.* EMPEROR. **22 Cr. L.J. 161=59 I.C. 913=11 P.W.R. 1921 Cr.**

———**S. 30**—*Confession—Evidentiary value—Weight due to.*

The confession of an accused should not carry the same weight as the evidence of the same person if he were examined as a witness. The Court must, after the most careful consideration, decide whether the degree of proof prescribed

EVIDENCE ACT (I of 1872), S. 30 – Joint trial, meaning of.

by S. 3 of the Evidence Act has been reached or not. (*Saunders*, A J.C.) EMPEROR *v.* NGA PO THA. **14 Cr. L.J. 566 = 21 I.C. 166 = (1913) 1 U.B.R. 170.**

Joint trial, meaning of.

——— **S. 30** – *Joint trial, meaning of—Proceedings under S. 117, Cr. P. Code.*

Persons against whom proceedings are being jointly taken under S. 117, Cr. P. Code, in one and the same enquiry are not on their joint trial for the same offence within S 30 of the Evidence Act. (*Piggott*, J.) SARJU *v.* EMPEROR. **41 All 231 = 17 A L J. 147 = 20 Cr. L J. 206 = 49 I.C. 654 = 1 U.P.L.R. (H.C.) 89.**

——— **S. 30** – *Joint trial, meaning of—Confession of co-accused—Admissibility—Proceedings under S. 110, Cr. P. Code.*

A confession by an accused implicating himself and two others in a charge of dacoity is inadmissible against the others in a proceeding under S. 110 of the Cr. P. Code. (*Teunon and Newbould*, JJ.) AMIRULLA PRAMANIK *v.* EMPEROR. **20 Cr. L J. 201 = 49 I C. 649 = 22 C.W.N. 408.**

——— **S. 30** – *Joint trial, meaning of—Trial once joint but separated later on.*

Where two accused were originally charged together but were later on tried separately, a statement by one cannot be used against the other. (*Krishnan*, J.) *In re* RAMUDU AIYAR. **44 M.L.J. 243 = 17 L.W. 370 = 32 M.L.T. (H. C.) 318 = 24 Cr. L J. 426 = 1923 Mad. 365.**

——— **S. 30** – *Joint trial, meaning of—Confession of co accused—If can be used against the other—Retraction—Effect.*

Where one of two persons, were jointly tried for the offence of murder made a confession, which implicated himself only of the offence of grievous hurt. *Held*, Per *Oldfield and Odgers*, JJ. (*Ramesam*, J., dissenting) that it could be used as a confession under S. 30 of the Indian Evidence Act, as against the other accused. (*Oldfield*, *Ramesam*, *and Odgers*, JJ.) *In re* MANICKA PADAYACHI. **25 Cr. L J. 385 = 72 I.C. 447 = 14 L.W. 474.**

——— **S. 30** – *Joint trial meaning of—Guilty—Refused to examine witnesses.*

Where one of the accused pleaded guilty and was examined at the end of the prosecution case, and declined to call any witnesses, the trial was a joint trial, so that his confession could be taken into consideration against the other accused. (*Saunders*, A.J.C.) EMPEROR *v.* NGA PO THA. **14 Cr. L J. 566 = 21 I C. 166 = U.B.R. 1 (1913) 170.**

——— **S. 30** – *Joint trial, meaning of—Confession by persons jointly tried for the same offence—Penal Code, S. 457.*

A conviction under S. 457, I.P.C., based on the confession of a co-accused who was being

EVIDENCE ACT (I of 1872), S. 30 – Retracted confession.

tried along with the prisoner under S. 411, I.P.C., is unsound and must be set aside. (*Eales*, J.C.) NGA PO TOK *v.* EMPEROR. **14 Cr. L J. 376 = 20 I C. 136 = U.B.R. 1 (1912) 158.**

Plea of Guilty.

——— **S. 30** – *Plea of guilty — Co-accused pleading guilty—If plea can be used against the other accused.*

The plea of guilty of one co-accused who is removed from the dock while the other alone is tried, cannot be taken into consideration against that other. (*Carnduff*, J.) EMPEROR *v.* KERMAT SIRDAR. **38 Cal. 446 = 12 Cr. L.J. 479 = 12 I C. 87 = 16 C.W.N. 49.**

——— **S. 30** – *Plea of guilty.*

A confession made by accused pleading guilty is not admissible in evidence against the other accused. (*Johnstone and Shah Din*, JJ.) KANHAIYA *v.* EMPEROR. **54 P.W.R. (Cr.) 1911 = 12 Cr. L.J. 605 = 12 I.C. 981 = 15 P.R. (Cr.) 1911.**

——— **S 30** – *Plea of guilty—Conviction when stolen property not found in possession.*

Where an accused was convicted of theft by house-breaking not because any stolen property was found in his house but because a single witness said he saw him near complainant's house about the time the offence was committed and because his co-accused stated that he was the culprit and that he the co-accused had been given the stolen property by him. *Held*, that the conviction could not be sustained. (*Saunders*, A.J.C.) NGA PO HAN *v.* EMPEROR. **14 Cr. L.J. 570 = 21 I.C. 170 (1) = 1 U B.R. 169.**

Retracted Confession.

——— **Ss. 30 and 114** – *Retracted confession—Confession by co-accused—Value of retracted confession.*

The confession referred to in S. 30 cannot be restricted to an unretracted confession and there is nothing to prevent a Court from convicting after considering the confession but the rules of practice of the High Courts in India are to be observed when exercising the discretion. A conviction founded solely on the confessions of co-accused cannot be sustained. S. 114 of the Evidence Act applies to the testimony of an accomplice on oath but not to a confession and a Judge sitting with assessors ought never to convict solely on confession but where sitting with jury he could either ask the accused to withdraw the confession or direct them to acquit unless corroborated in material particulars by independent evidence. (*Macleod*, *Heaton and Shah*, JJ.) GANGAPPA *v.* EMPEROR. **38 Bom. 156 = 14 Cr. L.J. 625 = 21 I.C. 673 = 15 Bom. L.R. 975.**

EVIDENCE ACT (I of 1872), S. 30—Retracted Confession.

———S. 30—*Retracted confession—Evidentiary value of.*

Where a confession made by an accused person is subsequently retracted by him and he does not implicate himself in the murder though he stated he was one of the conspirators. *Held*, the confession could not be taken into account against the co-accused for the person making the confession did not intend to implicate himself though he actually did so. As against the person making the confession it was certainly admissible in evidence. (*Shadi Lal*, C.J. *and Harrison*, J.) HAYAT *v.* EMPEROR.
4 Lah. L.J. 41=23 Cr. L.J. 561=1922 Lah. 119.

———S. 30—*Retracted confession—Murder—Conviction.*

It is unsafe to base the conviction for murder on the retracted confession of an accused unless it is corroborated by trustworthy evidence in all material particulars. (*Scott-Smith and Shadi Lal*, JJ.) SHER KHAN *v.* EMPEROR.
2 P.W.R. 1917, Cr.=75 P L.R. 1917=18 Cr. L J. 779=41 I.C. 155.

———S. 30—*Retracted confession—Corroboration.*

As against a co-accused a confession which has been retracted at the first opportunity should not be relied upon, if it is not corroborated by independent testimony. (*Johnstone*, C.J. *and Chevis*, J.) KARAM SINGH *v.* EMPEROR. **32 P.W.R. 1916 Cr.=17 Cr. L.J. 226=26 P.R. 1916 Cr.=34 I.C. 642=153 P.L.R. 1916.**

———S. 30—*Retracted confession—Co-accused—Evidence against.*

Where in a charge of murder, one of the two accused makes a confession implicating the other accused also but retracts it later on, independent evidence should be forthcoming in regard to each accused implicated. Where there is no real corroboration of the retracted confession, the accused are entitled to the benefit of the doubt and must be acquitted. (*Shah Din and Le-Rossignol*, JJ.) NUR MAHOMED *v.* EMPEROR. **22 P.W.R. 1915 Cr.=29 I.C. 101=16 Cr. L.J. 469=163 P.L.R. 1915.**

———S. 30—*Retracted confession—Value of—Corroboration, necessity of.*

A retracted confession of a co-accused is admissible under S. 30 of the Evidence Act and can be taken into consideration against him, but it is a well-established principle of law that the confession of a co-accused cannot be regarded as sufficient to support a conviction unless corroborated in material particulars by other evidence. (*Chevis and Shadi Lal*, JJ.) MUHAMMAD *v.* EMPEROR. **5 P.L.R. 1915=16 Cr. L.J. 157=27 I.C. 221=3 P.W.R. 1915 (Cr.).**

EVIDENCE ACT (I of 1872), S. 30—Self-exculpatory Statement.

———Ss. 30 and 24—*Retracted confession.*

Extra judicial confession by boys cajoled or frightened but retracted before the committing Magistrate, does not prove a case against persons jointly accused with the boys. (*Reid*, C.J. *and Rattigan*, J.) KUTAB ALI *v.* EMPEROR. **42 P.W.R 1911 (Cr.)=12 Cr. L.J. 597=12 I.C. 973=14 P.R. 1911 (Cr.).**

———S. 30—*Retracted confession of a co-accused.*

A retracted confession of a co-accused under S. 30 should not be considered as supplying sufficient evidence for the conviction of the other co-accused. (*Johnstone and Shah Din*, JJ.) ATAYA *v.* EMPEROR. **5 P.R. 1911 Cr.=27 P.W.R. 1911 Cr.=12 Cr. L.J. 276=10 I.C. 857=91 P.L.R. 1911.**

———S. 30—*Retracted confession.*

Held, per *Curiam*.—A retracted confession requires strong corroboration, in all material particulars. Per *Oldfield and Ramesam*, JJ.—Where a retracted confession is not corroborated in a material particular, *viz*, the connection of the other accused with the cause of the death, that other accused must be acquitted. (*Oldfield, Ramesam and Odgers*, JJ.) *In re* MANIKKA PADAYACHI. **24 Cr. L J. 385=72 I.C. 497=14 L.W. 474.**

———Ss. 30 and 114 (b)—*Retracted confession of co-accused—Conviction.*

The weight to be given to a retracted confession depends upon the circumstances under which it is made and on the intrinsic value of the confession. The confession of a co-accused is not the same thing as the testimony of an accomplice. It may be taken into consideration as lending support to other evidence. But in the absence of other evidence, conviction based upon it is improper. (*Rigg*, J.C.) NGA SAN NYEEN *v.* EMPEROR. **3 U.B.R. (1917) 3=18 Cr. L.J. 774=41 I.C. 150=11 Bur. L.T. 140.**

———Ss. 30, 114 and 133—*Retracted confession of accomplice—Value of.*

There is nothing in law to prevent the conviction of a man on the uncorroborated and retracted confession of a co-accused, if it be believed against him. (*Hartnoll and Young*, JJ.) NGA TUN E. *v.* EMPEROR.
14 Cr. L.J. 179=19 I.C, 179=6 Bur. L.T. 47.

Self-exculpatory Statement.

———S. 30—*Self-exculpatory statement—Admissibility.*

The self-exculpatory statement of the wife, to the effect, that the white substance was administered on the assurance by her paramour that it would bring about good feeling, did not amount to a confession and could not be used against the paramour as criminal conspiracy was not proved. (*Mookerjee and Beachcroft*, JJ.) KUSIR BABAND SHABEBAR MA *v.* EMPEROR. **14 Cr. L J 586=21 I.C. 378=18 C.L J. 590.**

EVIDENCE ACT (I of 1872), S. 30—Self. exculpatory Statement.

——S. 30—*Self-exculpatory only in respect of robbery.*

A confession by each of co-accused implicating self and co-accused as regards robbery but throwing entire burden for murder on the other is admissible as regards former and but inadmissible as regards the latter. (*Scott-Smith and Harrison, JJ.*) MIAN KHAN *v.* EMPEROR. **1923 Lah. 293.**

——S. 30—*Self-exculpatory statement.*

Where the evidence on a charge of murder consists of a confession by one accused against another, the accused excepting himself, and the evidence of an approver to the effect that he saw the deceased alive with the accused just before the murder, neither the confession nor the corroboration should be acted upon. (*Benson and Wallis, JJ.,*) MOORE VENKATA *v.* IRAGAKKAGIRI NAGI REDDI.
12 Cr. L.J. 562=12 I.C. 650=(1911) 2 M.W.N. 373.

——S. 30—*Self-exculpatory Confession—Statements by accused—Admissibility against maker co-accused.*

A statement by an accused person which suggests an inference of guilt may amount to a confession though the person making the statement may directly repudiate his participation in the crime. Such a statement may be taken into consideration against the person making the statement, but it may be unsafe to use it against a co-accused. Where, it appears that the person making the statement was, at all events, an accessory present at the commission of the crime, the statement can be used against the co-accused, if sufficient corroboration is forthcoming. (*Kanhaiya Lal, J.C. and Ashworth, A.J.C.*) JASOD *v.* EMPEROR.
20 Cr. L J 787=53 I.C. 691=6 O L J. 426

——S. 30—*Self-exculpatory — Confession of co accused—Retracted confession — Corroboration.*

A retracted confession of a co-accused, which is not self-implicating in the same degree as it implicates the co-accused is not safe to rely upon, in the absence of material corroboration. (*Roe and Ali Imam, JJ.*) UPENDRA NATH *v.* EMPEROR. **19 Cr. L J. 826=46 I.C. 842=(1918) Pat. 175.**

——S. 31—*Admission—Evidentiary value.*

In 1903 the plaintiff's predecessors-in-title made an admission in a case brought by them against their step-mother to the effect that a door existed at A in the court-yard now in dispute and that it had been opened by the father of the present defendant. *Held* that this admission alone was not sufficient to prove that the door was opened by defendant's father at any time prior to 1903. (*Moti Sagar, J.*) HIRA NAND *v.* AHMAD YAR. **1923 Lah. 608 (1).**

——S 31—*Admission—Illiterate people—Not binding.*

EVIDENCE ACT (I of 1872), S. 32—Date of Birth.

Where an illiterate person called another his adopted son but did not intend him to be his heir, the statement does not bind him. (*Johnstone, C.J.*) ARJAN SINGH *v.* DARBARA SINGH. **193 P L.R. 1915=32 I.C. 312=140 P.W.R. 1915.**

——S. 31—*Admissions—Weight due to.*

Express admissions of a party to a suit or admissions implied from his conduct are strong evidence against him but he can prove he was mistaken or that they were false. 29 A. 184, Rel. (*Wazir Hasan, A. J. C.*) SHEO DAYAL *v.* LALTA PRASAD. **23 O C. 184=58 I.C. 608=7 O L J. 565.**

——S. 32.

BHAT'S REGISTER.
DATE OF BIRTH.
DYING DECLARATION.
FACTS IN ISSUE.
FAMILY AFFAIRS.
HOROSCOPE.
INCONVENIENCE.
ORDINARY COURSE OF BUSINESS.
PANDA'S REGISTRAR.
PEDIGREE.
PROOF OF AGE.
RECITALS.
RELATIONSHIP.
SPECIAL MEANS OF KNOWLEDGE.
STATEMENTS AGAINST INTEREST.
WITNESS DYING DURING SUIT.
MISCELLANEOUS.

Bhat's Register.

——S. 32—*Bhat's Register—Gir Gossains.*

The Bhats are heralds interested in keeping family record which is evidence under S. 32 if it comes from proper custody. (*Richardson and Huda, JJ.*) KARTICK CHANDRA *v.* GOSSAIN PROTAP CHANDRA. **66 I.C. 894=25 C.W N. 908.**

——Ss. 32, 64 and 65—*Bhat's Register—Genealogy—Copies of—Bhat's books.*

Copies of entries of genealogies in Bhat's books are not admissible in evidence where the originals are in existence but not produced. The originals are admissible under S. 32 (2) and (5) of the Evidence Act, as it is a recognised duty and pursuit of a *bhat* to keep a genealogy of families where he officiates. (*Kotwal and Findlay, A.J.Cs.*) HAZARI LAL *v.* HAR GOVIND. **48 I.C. 875.**

Date of Birth.

——S 32, Sub-Ss. (5 and 6), Ill. (1)—*Date of birth—Family book—Entry of birth of child—Admissibility.*

In support of his plea of minority, the deft. tendered in evidence at the trial an entry recording the date of the deft's. birth made by his deceased father in a book in which he made similar entries with regard to the other members of the family. *Held*, that under

EVIDENCE ACT (I of 1872), S. 32—Date of Birth.

S. 32 (5) of the Evidence Act and ill. (1) to the section the entry was admissible in evidence. 20 Cal. 758 ; 24 Cal. 265 ; 25 Mad. 183 ; Ref.; 19 Q. B. 818, Dist. Illustrations appended to a statute are of great value in interpreting the meaning of the section. (*Lord Shaw.*) MAHUMED SYEDOL ARIFFIN *v* YEOH GOI GARK. **21 C W.N. 257=(1917) M.W.N. 162= 19 Bom. L.R. 157=43 I A. 256= 39 I.C. 401=(1916) 2 A C. 575= 86 L J.P C. 15=115 L T. 564= 32 T.L.R. 678 (P.C).**

———**S. 32 (5)**—*Date of birth—Statement as to date of birth by aunt—Admissibility.*

A statement in a guardianship petition made by a person's aunt that he was born on a certain day and that she was his aunt is admissible in evidence as it relates to the existence of relationship. 20 C. 758, 25 M. 183, Foll. (*Coxe and Beachcroft, JJ.*) MONINDRA MOHAN ROY *v.* RAM KRISHNA. **21 C.L J. 621=28 I.C. 595. [Overruling 20 C L J. 302=27 I.C. 30= 19 C W.N. 646]**

———**S. 32 (5)**—*Date of birth—Admissibility.*

Statements made by deceased persons are admissible to prove date of birth. 20 C. 758 ; 24 C. 265; 25 M. 183 Foll. (*Ayling and Seshagiri Aiyar, JJ.*) PATINHARKURU *v.* RAMAN VARMA. **24 I.C. 519=28 M.L.J. 669.**

Dying declaration.

———**S. 32**—*Dying declaration—Signs made in answer to question—Verbal statement.*

Where a Magistrate went to record the dying declaration of a woman and although she could not speak she in answer to questions put to her pointed out the accused as the assailant: *Held*, that the questions and answers taken together might properly be regarded as verbal statement made by a person as to the cause of her death within the meaning of S. 32, Evidence Act and were therefore admissible in evidence. (*Newbould and Ghose, JJ.*) EMPEROR *v* SADHU CHURN DASS. **49 Cal. 600= 22 C W.N. 414=1922 Cal. 409.**

———**S. 32**—*Dying declaration—Proof by a witness present.*

A dying declaration was recorded in the presence of a witness, read over to the deceased in the presence of the witness and admitted by the deceased to be correct. If the witness, who heard that statement swears that the written statement correctly reproduces the words used by the deceased, that is sufficient to prove that the deceased did use the words contained in that statement. 36 Cal. 659, Foll. (*Newbould and Suhrawardy, JJ.*) EMPEROR *v.* BALARAM DAS. **49 Cal. 358=24 Cr. L J. 221= 1922 Cal. 382 (2).**

EVIDENCE ACT (I of 1872), S 32—Dying declaration.

———**S. 32 (1)**—*Dying declaration—What is—Statements prior to occurrence causing death—Admissibility.*

Dying declarations are statements made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted. Statements made by a deceased long prior to the occurrence resulting in death are not dying declarations and not admissible under the Evidence Act. (*Broadway and Fforde, JJ.*) AUTAR SINGH *v.* EMPEROR. **4 Lah. 451=1924 Lah. 253.**

———**S. 32**—*Dying declaration—Mode of proof.*

The rules laid down by Taylor, J. in (6 C.W. N. 72) should be followed in recording and proving dying declarations:—"Witnesses should not be allowed to prove a dying declaration as it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made and that statement is not the document made by the Magistrate. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him and read over by him at or about the time the statement is made". (*Abdul Kadir, J.*) KUNJ LAL *v.* EMPEROR. **23 Cr. L.J. 417= 67 I.C. 577=4 U.P.L.R. (Lah.) 88.**

———**S. 32 (1)**—*Dying declaration—Transaction resulting in death—Suicide owing to ill-treatment by accused, charged, under Penal Code, S. 330.*

The accused were charged under S. 330, I.P. C., with having for the purpose of extorting a confession, caused hurt to one R, who committed suicide owing to the ill-treatment. *Held*, that ill-treatment was the cause though not the direct cause of the suicide and although the accused were not legally responsible for the suicide, the whole affair, ill-treatment, and subsequent suicide, being one transaction the statement of the deceased was admissible under S. 32 (1) of the Evidence Act. (*Shah Din and Chevis, JJ.*) THE CROWN *v.* FAIZ. **20 P.R. 1916 (Cr.)=42 P.W.R. 1916 (Cr.)= 35 I.C. 998=17 Cr.L J. 438=47 P.L.R. 1917.**

———**S. 32 (1)**—*Dying declaration—Proof of.*

A dying declaration recorded by a Magistrate is not evidence unless proved by the statement of the Magistrate though he is himself the committing Magistrate in the case. A Court cannot go beyond the rule that every statement placed on the record must be properly proved. Dying declarations are not covered by the provisions of Chap. 41 of the Cr. P. C. (*Reid and Kensington, JJ.*) GHAZI *v.* EMPEROR. **14 Cr. L.J. 131= 18 I.C. 883=239 P.L.R. 1912.**

EVIDENCE ACT (I of 1872), S. 32—Dying declaration.

———S. 32—*Dying declaration—Admissibility of—Cr. P. C. Chap.* 41—*Proof of.*

A dying declaration recorded by a Magistrate should be proved before it can be accepted as evidence and the fact that the Magistrate was the Committing Magistrate in the case is not unreasonable in itself but is legally insufficient, makes no difference. Dying declarations are not covered by Ch. 41 of the Cr. P.C. to enable them to be admitted without proof. (*Reid*, C.J. *and Kensington*, J.) GHAZI *v.* EMPEROR.
17 P R. 1911 Cr. = 13 Cr. L.J. 225 = 14 I.C. 417 = 48 P.W.R. 1911 Cr.

———S. 32 (1)—*Dying declaration—Admisibility of.*

Evidence Act makes dying declarations relevant facts as written statements of deceased or written records of verbal statements which a deceased makes and which becomes substantive evidence of the cause of deceased's death. An oral statement of the deceased about the cause of his death may be proved by any who heard it as well as by the person who recorded it. Under S. 321 it is not necessary that the magistrate recording the confession should be called and be asked to refresh his memory by referring to statements of witness under S. 159 of Evidence Act. 8 C. 211; 6 C.W.N. 72 dessented from. (*Spencer and Phillips*, JJ). *In re* KARUPPAN SAMBAN. **31 I C. 359 = 16 Cr. L.J 739.**

———Ss. 32, 33—*Dying declaration—When admissible.*

The dying declaration being the most important piece of evidence must be as exact and full as possible. Where the record of the said declaration spoken to by the witnesses is apparently less than what they said, a retrial must be held. The propr legal mode of proving verbal statements of a deceased is to elicit it from the person who heard him make it. The witness can refresh his memory from the record of the statements returned by himself or by another in his presence; otherwise it is not relevant. If it is a deposition in the presence of the accused it would be relevant. A deceased's written statement signed by him after having been satisfied of its accuracy is admissible under S. 32 as his statement in writing. Such a statement would not debar a witness from proving that the deceased said, independently of the writing. It would be desirable to record, what the witness can reproduce from his memory without reference to the writing. (*Abdur Rahim and Sadasiva Aiyar*, JJ). PUBLIC PROSECUTOR *v.* BALA NAGI REDDI.
11 M.L T. 214 = 22 M.L.J. 453 = 15 I C. 308 = 13 Cr. L.J. 468 = (1912) M.W.N. 405.

———S. 32—*Dying declarations—Evidentiary value.*

A dying declaration made after receiving extreme unction should generally be believed

EVIDENCE ACT (I of 1872), S. 32—Dying declaration.

to be true and acted upon. (*Benson and Wallis*, JJ) PATTAM *v.* EMPEROR.
12 Cr. L.J. 528 = 12 I.C. 296 = (1911) 2 M.W.N. 188.

———S. 32 (1)—*Dying declaration—Deponent not signing—Whether statement admissible in evidence—How proved.*

A dying declaration reduced to writing but not signed by the deponent, is not admissible in evidence, but must be proved by the oral testimony of the person who heard it. Notes of Police officer relating to a dying declaration are not admissible in evidence, unless signed by the deponent, but in testifying to it, he can refer to them to refresh his memory. (*Hallifax*, A.J.C.) BHAGWAN *v* EMPEROR.
15 Cr. L J. 243 = 23 I.C. 195 = 10 N.L R. 19.

———S. 32—*Dying declaration—Gestures of wounded person—Admissibility—Interpretation.*

Where a person whose throat had been cut as a result of which death ensued later, made certain gestures in reply to questions put by the police. *Held*, the gestures were admissible in evidence, 7 All. 385 Foll. The interpretation of the gesture is for the court alone and the opinion of witnesses as to their meaning is not evidence. (*Coutts and Ross*, JJ.) CHANDRIKA RAM KAHAR *v.* EMPEROR. **1 P. 401 = (1923) Pat 26 = 3 P.L T. 771 = 24 Cr. L J 129 = 1 P.L R Cr. 77 = 1922 P. 535.**

———S. 32—*Dying declaration when admissible—Requisite for admitting entries in evidence under the section.*

Unless the death of the person making the entries in an account book is proved, S. 32 of the Act does not admit such entries in evidence. (*Roe and Jwala Prasad*, JJ.) SEW PRASAD *v.* RADHA MOHAN SAHAY. **37 I.C. 877.**

———S. 32—*Dying declaration—When not admissible.*

A statement by a dying person not about the circumstance of his death, but about a dacoity that was taking place at the time of his death is not admissible under S. 32 (1) in a trial for the dacoity. Nor can those statements be admissible under S. 32 (3) unless they would have exposed him to criminal prosecution. (*Hartnoll*, C.J.) NGA TE *v.* EMPEROR.
14 Cr. L.J. 510 = 6 Bur. L.T 183 = 20 I.C. 990 = 7 L.B.R. 33.

———Ss. 32, 33—*Dying declaration—Proof of.*

A statement of a deceased person recorded in the absence of the accused is not admissible under S. 33 of the Evidence Act. Nor is it admissible under S. 32 (1) unless it is proved by the magistrate who recorded it or by some one who heard it made. (*Hartnoll and Young*, JJ.) NGA PO *v.* EMPEROR. **14 Cr. L J. 396 = 20 I.C. 220 = 6 Bur. L T. 68.**

EVIDENCE ACT (I of 1872), S. 32—Facts in issue

Facts in issue.

——S. 32—*Facts in issue, when relevant.*

Facts in issue are relevant facts within S. 32 and statements made by deceased persons about facts in issue are admissible under this section. 15 Bom. 565 Dist., 27 M. 228 Ref. (*Abdur Rahim and Phillips*, JJ.) RAGHUBHUHAM *v.* VIDIAVARADHI. **34 I.C. 875.**

Family affairs.

——S. 32 (5)—*Family affairs—Mode of succession—Admissibility.*

A document containing a statement of a deceased person as to the mode of succession in a particular family is admissible. 25 M. 183 Foll. (*Ayling and Seshagiri Aiyar*, JJ.) PATINHAR KARU *v.* RAMAN VARMA. **24 I.C. 519=28 M.L.J. 669.**

——S. 32—*Family affairs.*

A statement in a will of a deceased co-parcener that he and his brothers were living separately is not admissible under S. 32 of the Evidence Act. (*Leggat*, A.J.C.) GOKUL DAS *v.* CHANDI BAI. **10 I.C. 967=4 S.L.R. 225.**

Horoscope.

——S. 32 (5)—*Horoscope—Evidence of per-drawing up.*

A statement about the date of the son's birth by a father at the time of preparing a horoscope is admissible in evidence under S. 32 cl. (5) of the Evidence Act as it was the date of the commencement of a relationship. (*Abdur Rahim and Spencer*, JJ.) ANNAMALAI *v.* ANNAMALAI CHETTI. **32 I.C. 456= 10 L.W. 67.**

——S. 32 (5)—*Horoscope—Admissibility of evidence.*

A horoscope is receivable in evidence under S. 32 (5) but the party making it must have had special means of knowledge. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. **3 L.W. 210=33 I.C. 969= (1916) 1 M.W.N. 208.**

——Ss. 32, 159 and 160 — *Horoscope—Evidence, of age—Date of birth—Proof of horoscope.*

Under Ss. 159 and 160 of the Evidence Act a horoscope can be used to prove the date of birth stated in it if the person, who wrote it or who read it soon after it was written, is examined as a witness. S. 32 of the Evidence Act does not make relevant the statements of date obtained in a document like a deed of adoption or initiation of a chela. (*Halifax*, A.J.C.) SHANKER GIR *v.* CHINNUJI. **6 N.L.J. 1=1923 Nag. 164.**

——S. 32 (5) and (6)—*Horoscope — Statements in.*

EVIDENCE ACT (I of 1872), S. 32—Ordinary course of business.

Statements as to age made by deceased persons *e g.*, in horoscopes in the circumstances mentioned in S. 32 of the Evidence Act, are admissible in evidence. A horoscope prepared by a deceased person is admissible in evidence to prove age. (*Miller* C.J. *and Mullick*, J.) AMAR DAYAL SINGH *v.* HER PERSHAD SAHU. **5 P.L.J. 605=58 I.C. 72= 1 P.L.T. 511.**

Inconvenience.

——S. 32—*Inconvenience.*

The inconvenience and expense to be taken into account must be with respect to individual witnesses and not arising merely from the number of witnesses which a party wishes to call. (*Abdur Rahim and Phillips*, JJ.) RAGHUBHUSAN *v.* VIDYYAVARDHI. **34 I.C. 875.**

Ordinary Course of Business.

——Ss. 32 (2) and 34—*Ordinary course of business—Talab baki papers—Admissibility.*

Talab Baki papers are not sufficient evidence to charge any person with liability under S. 34. Such papers may be evidence under S. 32, Cl. (2); but before they can be admitted, a landlord must show that the person making the statement is dead and the entries are made by him in the ordinary course of business. (*Chatterjee and Duval*, JJ.) UMED ALI *v.* KHAJEE HABIBULLA. **47 Cal. 266=56 I.C. 38= 31 C.L.J. 68.**

——S. 32 (2)—*Ordinary course of business—Papers kept in ordinary course of business.*

There is nothing in S. 32 (2) which requires any formal proof that certain settlement papers were kept as a fact in the ordinary course of business. Care should be taken not to confuse S. 32 (2) with S. 34. (*Holmwood and Mullick*, JJ.) BAID NATH SAHAY *v.* NANKU MAHTON. **29 I.C. 219.**

——Ss. 32 (2) and 33—*Ordinary course of business—Endorsement of a postal peon — Admissibility of.*

An endorsement on the cover of a letter by a postal peon is at best a record of a statement of the peon and must be proved by calling him as a witness unless the statement becomes admissible under S. 32 (2) or S. 33. Such an endorsement is not admissible even as a statement made by a public officer in the discharge of his duty. (*Mookerjee and Walmsley*, JJ.) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATTA. **20 C.L.J 456= 26 I.C. 962=19 C.W.N. 489.**

——Ss. 32 (2) and 34—*Ordinary course of business* - Jamabandi—*Entries made 70 years ago—Presumption.*

The entries in *Jamabandi* papers began in 1838 and ended in 1872: *Held*, that with regard to the bulk of these entries the presumption

EVIDENCE ACT (I of 1872), S. 32—Ordinary course of business.

was that the persons who made them could not be called and the Court may treat the papers as evidence under S. 32 (2). Entries may be admitted as evidence either under S. 32 or under S. 34. Under S. 32, there is no necessity for corroboration. 28 B. 294, Foll. (*Harrington and Casperz, JJ.*) DUKHA MANDAL *v.* GRANT. **16 I.C. 467=16 C.L.J. 24.**

———S. 32—*Ordinary course of business—Statements not made in the usual course of business.*

S. 32 (2), Evidence Act does not include statements of deceased not made in the usual course of business. (*Sadasiva Iyer and Phillips, JJ.*) KOLANGORATH RAMAN *v.* KANNOTH. **2 L.W. 941=31 I.C. 184=(1915) M.W.N. 793.**

———Ss. 32, 34—*Ordinary course of business—Entries in account books in course of business—Corroboration.*

Entries made in books of account kept in the regular course of business are admissible under S. 34 only when there is other evidence to corroborate them; but under S. 32 (2) they may be admissible without such corroboration when the person who made the entries cannot be found. (*White, C.J. and Tyabji, JJ.*) RAMASAWMI NAICK *v.* RAMACHANDRAN CHETTY. **(1914) M.W.N. 240=22 I.C. 627=1 L.W. 136.**

———S. 32—*Ordinary course of business—Statement of writer.*

Where direct evidence of the handwriting or mark of a person is not available indirect evidence may be given and the endorsement of the deceased scribe that the mark was that of the executant is admissible under S. 32 (2) of the Evidence Act. (*Mittra, O.A.J.C.*) MT. LAHINI *v.* BALA. **18 N.L.R. 85=1922 Nag. 227.**

———S. 32—*Ordinary course of business—Statement made in gossip—Admissibility.*

Statement by a person made in ordinary course of gossip and not in ordinary course of business is not admissible under S. 32 (2) of Evidence Act. (*Mittra, A.J.C.*) AJODHI *v.* EMPEROR. **21 Cr. L.J. 486=56 I.C. 582=16 N.L.R. 30.**

———S. 32 (2)—*Ordinary course of business—Statement by deceased scribe as to marks of executant.*

A bond was executed by three persons who were all dead. They were illiterate and their signatures were indicated by marks (*nishani*). The scribe and the attesting witnesses had also died. The whole of the bond including the marks was proved to be in the handwriting of the deceased scribe by the evidence of his father, a bond writer. *Held*, direct evidence found in the body of the bond itself that the marks were those of the executant by the written statement therein of the scribe is relevant

EVIDENCE ACT (I of 1872), S. 32—Ordinary course of business.

under S. 32 (2) it having been made by him in the ordinary course of business as a bond writer. (*Hallifax, A.J.C.*) HARIA *v.* MANAKCHAND. **27 I.C. 866=11 N.L.R. 9.**

———Ss. 32 (2)—*Ordinary course of business—Chowkidar's diary—Entry made by third person—Admissibility in evidence.*

Where entries relating to the deaths of the inhabitants of a place had been made in the diary of a deceased chowkidar not by the chowkidar himself but by some other person, the entries are inadmissible in evidence unless it is proved that it was the duty of that person in the ordinary course of business to make the entries. (*Das and Adami, JJ.*) MUSSAMMAT CHANDRAMA KUER *v.* RAMGAYAN. **1922 P. 111.**

———Ss. 32, Cl. (2) and 34—*Ordinary course of business—Zemindari papers—Admissibility of—Independent evidence.*

Although Zemindari papers cannot be admitted under S. 34 of the Evidence Act as corroborative evidence without independent evidence of the fact of collection at certain rates, they can be used as independent evidence if they are relevant under S. 32, Cl. (2) of that Act. (*Dawson Miller, C.J. and Mullick, J.*) CHARITTER RAI *v.* KAILASH BEHARI. **4 P.L.W. 213=1918 Pat 148=44 I.C. 422=3 P.L.J. 306.**

———S. 32—*Ordinary course of business—Entries through named persons in account book kept by deceased servant.*

When a deceased servant kept his master's accounts in the course of business, and entries of payments through named persons are made therein, such entries are, under S. 32 of the Act, admissible in proof of payments only if those named persons are called on to prove the actual payment. (*Roe and Jwala Prasad, JJ.*) SEW PRASAD *v.* RADHA MOHAN SAHAY. **37 I.C. 877.**

———S. 32 (2)—*Ordinary course of business—Revenue surveyor's report—Probative value.*

A Revenue Surveyor's reports though admissible in evidence under S. 32 (2) have very little probative value when they are not signed by the transferors and are not supported by evidence of persons who purport to sign them as witnesses. (*Twomey, J.*) MG PO NYEIN *v.* MAUNG MY. **27 I.C. 777=8 Bur. L.T. 85.**

———S. 32—*Ordinary course of business—Scope and meaning of.*

The words "in the ordinary course of business" indicate the regular routine of business usually followed and adhered to, on all occasions by the person whose declaration is sought to be introduced; but it has no reference to business of other stray character. 23 B. 63, Foll. (*Parlett, J.*) ABDULLA *v.* MA E KIN. **11 I.C. 854=4 Bur. L.T. 185.**

EVIDENCE ACT (I of 1872), S. 32—Panda's Register.

Panda's Register.

——S. 32 (6)—Panda's *register—Family relationship in* panda's *book—Admissibility—Secondary evidence.*

Entries in *panda's* register or note-books can be admitted as evidence upon a question of family pedigree but they should be received with caution and should be severely scrutinised to guard against fabrication. 30 A. 510 (P. C.), Ref. (*Chamier and Piggott*, JJ.) THE COLLECTOR OF FARUKHABAD *v.* GAJRAJ SINGH. **15 I.C. 625.**

——Ss. 32 (4) and 35—*Pandas register—Entries in books of Hardwar Priests—When admissible as evidence.*

Entries in books of Hardwar priests, if made *ante litem motam* would be of great weight in establishing a pedigree table. (*Johnstone and Shadilal*, JJ.) RAM SINGH *v.* DAULAT SINGH. **171 P.L.R. 1914=23 I.C. 550=97 P.W.R. 1914.**

Pedigree.

——S. 32 (6)—*Pedigree—Proof of—Person making the statements not known.*

A document ancient and genuine purporting to be a family pedigree was produced in evidence in a mutation case by J who stated he had received it from his grand-father. No objection was taken to its admission though its genuineness was not admitted. It was not proved who had prepared the pedigree. *Held*, that under the circumstances it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under S. 32, cl. 6 of the Evidence Act. Objection to the admissibility of evidence taken at a late stage in litigation is not to be encouraged. The proper time to object is at the trial when the evidence is tendered. (*Richards*, C.J. *and Rafique*, J.) JAGANGIR *v.* SHEO RAJ SINGH. **37 All. 600=30 I.C. 505=13 A.L.J. 817.**

——S. 32, cls. (2) and (6)—*Pedigree—Proof of—Books of family chronicler.*

Where a family pedigree was sought to be proved by books kept by a family chronicler, *Held*, (1) under S. 32 (2) they would be admissible as books kept in the ordinary course of business by a professional man or a person whose business it was to keep such a book; (2) it would also be admissible under S. 32 (6) which enables a family pedigree to be admitted in evidence so long as the members of the family depend on a particular person to keep a record of family events. (*Macleod*, C.J. *and Shah*, J.) MOHANSINGH UMED RAMOL *v.* DALPATSINGH KANBAJI. **46 Bom. 753=24 Bom. L.R. 289=1922 Bom. 51.**

——S. 32 (6)—*Pedigree book.*

A book of pedigree is relevant under cl. 6, S. 32 though it may not have been shown that all the writers of pedigree had special means of knowledge and though the book may not be in the possession of a member of family concerned. (*Drake-Brockman*, A. J. C.) LAHANU *v.* MOTIRAM. **63 I.C. 968=4 N.L.J. 33.**

EVIDENCE ACT (I of 1872), S. 32—Pedigree.

——S. 32 (5)—*Pedigree filed in Court—Proof of—Knowledge of relationship.*

Unless it is shown that the person who files a pedigree in Court had special means of knowing relationship between the parties, the pedigree cannot be received in evidence and it cannot be accepted as evidence that he had that knowledge. Proof of special source of knowledge is a pre-requisite to the admission of the document in evidence and until the document is received in evidence no presumption can be made from the statements contained in it. (*Lyle*, A.J.C.) BHIMA SINGH *v.* MT. SUNDER. **9 O.L.J. 186=4 U.P.L.R. (O.C.) 79=26 O.C. 109=1922 Oudh 218.**

——S. 32—*Pedigree—Succession—Claim based on a pedigree table—Proof.*

To support a claim upon a pedigree table, it must be proved that those higher in the degree of relationship than the claimant are extinct. (*Wazir Hasan*, A. J. C.) JASODHA *v.* MURALIDHAR. **61 I.C. 144=24 O.C. 1.**

——S. 32 (6)—*Pedigree filed by general agent of deceased person—Admissibility.*

A pedigree filed by a general agent in a suit to which the deceased was a party can be presumed to have been filed under his instructions, and such pedigree if other conditions be satisfied would be admissible in evidence in a subsequent litigation. (*Kanhaiya Lal*, J. C.) BALBHADDAR SINGH *v.* SRI PAL SINGH. **48 I.C. 308=21 O.C. 251.**

——S. 32 (5)—*Pedigree with doubtful circumstances not to be admitted.*

When at the time of the village settlement some papers were put in, one of which was a pedigree and at the end of it some names found in the pedigree also appeared and it was doubtful whether the attached names were intended to show the correctness of all the papers or only of the last of such papers. *Held*, the pedigree could not be admitted in evidence. 25 I.C. 823, Dist. (*Stuart*, J.C.) KASHI SINGH *v.* RAM NARAIN, **3 O.L.J. 560=37 I.C. 138=19 O.C. 321.**

——S. 32 (5)—*Pedigrees filed in settlement Courts—Admissibility.*

Pedigrees filed in the Settlement Courts are only admissible under the provisions of S. 32, cl. (5) and in order to make them admissible as the statements of deceased persons relating to family connections, it must be shown that the persons making the statement had some special means of knowledge with regard to the relationship deposed to, which knowledge can be presumed in the case of members of the family or closely related to the family. (*Lindsay*, J.C.) SURAJ BALI *v.* TILOK CHAND. **36 I.C. 66=3 O.L.J. 327.**

EVIDENCE ACT (I of 1872), S. 32—Pedigree.

———S. 32 (5)—*Pedigree—Proof of.*

A pedigree though not prepared by a member of the family or an official bound to record it, and not signed by any family member but which were adopted by members of the family is admissible under S. 32 (5) of the Act. (*Stuart*, J.C. *and Kendall*, A.J.C.) RAM DIN *v.* KAYESTH PATHSHALA, ALLAHABAD.
25 I.C 823=1 O.L J. 447.

———Ss. 32 (6) and 50—*Pedigree from settlement record—Admissibility.*

Where the pedigree is extracted from a settlement record it is presumed to be genuine under S. 90 of the Evidence Act and it is admissible in evidence under S. 50 and not under S. 32 (6) of the Act. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BHABUTI SINGH *v.* KHETAL SINGH.
21 I.C. 274.

———Ss. 32, Cl. (5) and (6) *and* 90—*Pedigree filed in Settlement Record—Admissibility.*

A pedigree filed in settlement record must, before it is admitted in evidence, be proved to have been made by a person having knowledge of it before the question in dispute has been raised, though a presumption may be made in its favour under S. 90 of the Act because it is more than 30 years old and is produced from proper custody. 30 A. 510, Ref. (*Piggott*, J.C.) MATHURA PRASAD SINGH *v.* BHULAN SINGH.
14 I.C. 339=15 O.C. 364.

———S. 32 (5)—*Pedigree—Proof of special means of knowledge.*

The pedigree produced in one Court is admissible in evidence in another Civil Court upon proof that the person making the statement contained in the pedigree was dead and that he had special means of knowledge. (*Evans*, A. J.C.) KASHI SINGH *v.* BALRAJ SINGH.
10 I.C. 199.

———S. 32 (5)—Pedigree—*Admissibility.*

Before a pedigree is admitted in evidence, it must be shown they were made by a person who has special means of knowledge of the relationship. Where it purports to be based on an old genealogical tree which no longer exists, the person who was responsible for the old document must be indicated. (*Das and Macpherson*, JJ) JHOBALI RAI *v.* SAKHI RAI.
(1923) Pat. 266=1923 P. 385.

Proof of age.

———S. 32 (6)—*Proof of age—Birth-day books—Admissibility of—Husband's evidence as to wife's age—Affidavit—Admissibility of.*

Where the evidence shows of a practice of making entries of dates of birth in books kept for the purpose of obtaining the opinion of astrologers, the Birth-day books are admissible in evidence to prove the dates of birth if the parol evidence concerning them is accepted. A husband's statement as to his wife's age, though hearsay, is admissible for what it was worth; and an affidavit in which he had sworn

EVIDENCE ACT (I of 1872), S. 32—Recitals.

to the same date previously before the controversy is admissible in evidence. (*Sir Arthur Channell.*) CHUAH HOOI GNOH NEOH *v.* KHAW SIM BEE.
31 I C 637=
19 C.W.N. 787 (P.C.).

———Ss. 32 (5) and 11—*Proof of age—Statement by a deceased person as to date of birth—Admissibility.*

A statement of a deceased person made in a guardianship application concerning the date of birth of the minor is not admissible in evidence to prove the age of the minor in a subsequent suit as the statement cannot be regarded as one relating to the existence of any relationship by blood, marriage or adoption. Nor can it be covered by S. 11 of the Act. (*Coxe and Beachcroft*, JJ.) RAM KRISHNA SADHUKHAN *v.* MUNINDRA MOHAN RAY.
27 I.C. 30=20 C.L.J. 302.

———Ss. 32 (5) and (6)—*Proof of age—Recital in a will—Admission—Register whether admissible.*

The recital in a will about the age of another person when that recital is not merely incidental is admissible in evidence as to the age of that person at that time. (*White*, C.J. *and Tyabji*, J.) KRISHNAMACHARIAR *v.* VEERAVELLI KRISHNAMACHARIAR. 38 Mad. 166=
13 M.L.T. 385=(1913) M.W.N 355=
19 I.C. 452=24 M.L.J. 517.

———S. 32—*Proof of age—Special means of knowledge.*

Statement by a person before a public officer as to his son's age is admissible in evidence under S. 32 of the Evidence Act. (25 M. 183; 20 C. 768, Foll. (*Benson and Abdur Rahim*, JJ.) BAPPA RAJU *v.* KONDU RAJA. 9 I.C. 324=
9 M.L.T. 220.

Recitals.

———S. 32—*Recitals in will—Statement of dead person—Statement in will showing sum due by a third person.*

Statements in the will made by the deceased that he had spent a particular sum in effecting the repairs of the house was not a statement made against his pecuniary or proprietary interest and it could not be held that the memo of expenses made by the deceased was made in the ordinary course of the business. Both the statements were held inadmissible. (*Macleod*, C.J. *and Heaton*, J.) NARHARI *v.* BALKRISHNA. 44 Bom. 192=55 I C. 316=
22 Bom. L.R. 57.

———Ss. 32 (5) and 155—*Recitals in guardianship petition—When admissible in evidence.*

A recital as to the date of birth in a guardianship application is not by itself admissible in evidence but if the person who made the statement is dead, or cannot be found or had special means of knowledge, it will be admissible—If he is examined as a witness his credit can be

EVIDENCE ACT (I of 1872), S. 32—Recitals.

impeached by producing the same. (*Mookerjee and Rankin, JJ.*) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDHURY.
38 C.L.J. 213 = 1924 Cal. 420.

——S. 32 (3)—*Recitals—Deed not inter-partes—Recitals of boundaries—Admissibility in evidence.*

Recitals as to boundaries in documents of third parties are admissible only under S. 32 (3) if the persons making them are dead or cannot be found or the like. (*Newbould, J.*) ABDUL RAHIM KHAZI *v.* JONAB ALI SIKDAR.
1923 C. 299.

——Ss. 32 (7) and (13)—*Recitals in will.*

Wills not admitted to probate are not admissible in evidence under Ss. 13 (*a*) and S. 32 (7) except on proof by an attesting witness that they are in accordance with S. 50 of the Ind. Suc. Act. (*Fletcher and Teunon, JJ.*) MOHESHWAR PANDA *v.* SUNDAR NARAIN.
33 I C. 342 = 22 C.L.J. 551.

—— S. 32 (2)—*Recitals in document.*

As Ss. 65 and 91 make it clear that when a written grant is lost, secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure and the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 65, 32 (2) or 35. (*Sadasiva Iyer and Moore, JJ.*) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL. **35 I C. 201 = 4 L W. 331.**

——S. 32 (7)—*Recitals in documents—Statement by deceased mortgagor in mortgage deed—Admissibility.*

Statements in mortgage deeds which are admissible in evidence under S. 32, cl. 7 read with S. 13 of the Evidence Act are rightly treated as reliable, and can be acted on if corroborated by other oral evidence in the case. Recitals in deeds, when the executant is deceased are admissible under S. 32 (7). (*Sadasiva Aiyar and Napier, JJ.*) VISALAKSHIAMMAL *v.* DORASINGA PILLAI.
29 I C. 974.

——Ss. 32 (a), 11 and 13—*Recitals—Documents between third parties.*

Recitals of boundaries of lands in documents between third parties are admissible in evidence. (*Prideaux, A.J.C.*) TRIMBAK *v* GANESH.
1923 Nag. 22.

——S. 32—*Recitals in document.*

If the conditions of this section are fulfilled a recital in a document not *interpartes* is admissible in evidence. (*Das, J.*) RAM SARUP KAMKAR *v.* BHAGWAT PROSAD.
57 I.C. 194 = 2 U P.L.R. (P.) 156.

——S. 32—*Recitals in documents—Third persons.*

A statement of boundaries in document of title is admissible against third parties if the third parties are dead or outside the jurisdiction

EVIDENCE ACT (I of 1872), S. 32—Relationship.

of the Court. 19 C.W.N. 468, Dist. (1914) M. W.N. 779; 16 C.W.N. 252; 17 C.W.N. 108; 11 A.L.J. 139 Foll.; 23 B. 63, Not appr. (*Roy and Jwala Prasad, JJ.*) LALU SINGH *v.* SAHDEO SINGH.
36 I.C. 610.

Relationship.

——S. 32 (5)—*Relationship — Admission by female member of family as to the status of heir—Improvements—Compensation — Assessment.*

Where the status of B as a daughter's son of A is in question, an admission of such relationship by another wife of A, is of great weight in favour of B. (*Lord Shaw*). KIDAR NATH *v.* MATHUMAL. **15 Bom L R 467 = (1913) M.W.N. 403 = 13 M L.T 434 = 127 P.L.R. 1913 = 77 P R. 1913 = 40 C. 555 = 25 M L J. 176 = 18 I.C. 946 = 17 C W N 797 (P.C.).**

——S. 32 (5)—*Relationship—Proof of—When admissible.*

A statement by a deceased plaintiff as to his relationship with certain persons contained in a plaint filed before the existence of any dispute concerning that relationship is admissible under S. 32 (5) in a subsequent suit in which that relationship is in dispute. Every member of a family has a "special means of knowledge," within the meaning of this section of being able to state who are his near relations. *Richards, C.J. and Banerjee, J.*) MANULA DAD KHAN *v.* ABDUL SATTAR
15 A.L J 349 = 39 I C 666 = 39 A. 426.

——S. 32 (5)—*Relationship—Adoption—* Mohant *and* Chela.

The relationship between a *Mohant* and a *Chela* is a relationship by adoption and a statement by a *mohant* that he has one *chela* is a statement relating to the existence of a relationship. A statement as to the time of commencement of relationship is so indissolubly associated with the existence itself of the relationship that it may be rightly regarded as a statement relating to the existence of that relationship under cl. 5, S. 32 of the Evidence Act. 25 M. 183; 24 I.C. 519 Ref. (*Mookerjee and Bachcroft, JJ.*) ACHYUTANANDA DAS *v* JAGANNATH DAS
21 C.L J. 96 = 27 I C. 739 = 20 C W N. 122.

——Ss 32 (5, and 50—*Relationship—Evidence of—Joint ownership of an open plot of land—Oral evidence of persons with no means of knowledge.*

The mere fact of joint ownership of an open plot of land by a number of persons in the same locality has a very remote bearing on their relationship *inter se*; and the oral evidence of persons with no means of knowing the alleged relationship and interested in the success of the suit has little value in proving title to property. (*Johnstone and Shadi Lal, JJ.*) RAM SINGH *v.* DAULAT SINGH.
171 P.L.R. 1914 = 23 I C. 550 = 97 P.W.R. 1914.

EVIDENCE ACT (I of 1872), S. 32—Relationship.

——S. 32, Illus. k)—*Relationship.*

Relationship which may be proved by the statement of a deceased person, may be the relationship of the person making the statement. Thus recitals in sale deed and mortgages by the adopted son and in his will in which he described himself as adopted son, were admissible under S. 32 (5) and (6) of the Act. (*Wallis*, J.) MULLANJI VENKATARANGIAH CHETTY *v.* VENKATA SUBBAMMAL. **13 M.L.T. 515 = 19 I.C. 740 = 25 M.L.J. 373.**

——S. 32 (3), (5)—*Relationship—Adoption—Consent of* Sapinda—*Admission of receipt of consideration.*

A statement by a deceased *Sapinda* admitting the receipt of consideration for consenting to an adoption is within S. 32 (3) and is admissible in evidence. Such a statement is also within S. 32 (5) as it relates to the existence of the relationship by adoption. It is immaterial for its admissibility that the time of making it the status of adoption had not been created or that it was not made *Ante Litem Mortam* (*White and Phillips*, JJ.) DHANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. **18 I.C. 989 = 36 Mad. 19.**

——S. 32 (5)—*Relationship—Statement as to relationship—Admissibility—Statement as to adoption.*

A statement by a deceased person that he was adopted when he was four years old into another family is admissible under S. 32 (5) of the Evidence Act to prove its relationship. (*Drake Brockman*, J.C.) GOLAB THAKUR *v.* FADALI. **68 I.C. 566.**

——Ss. 32 and 33—*Relationship—Statements of deceased witnesses—Legitimacy—Mutation proceedings.*

Where in mutation proceedings before a Revenue officer authorised to record statements of witnesses on oath, certain statements relating to the legitimacy of a particular person are made, such statements are admissible in a suit in the Civil Court by a party to the mutation case. But those statements are not admissible if the subsequent suit in the civil Court is between persons not parties to the mutation proceedings. (*Daniels*, J.C. *and Dalal*, A.J.C.) MUMTAZ UN NISSA BEGAM *v* WAZIR ALI. **65 I.C. 308 = 8 O.L.J. 569.**

——S. 32 (5)—*Relationship—Statements of relatives and servants.*

The statements made by the deceased relatives, servants and dependants of a family are admissible under S. 32 (5) of the Evidence Act, equally with the statements of the members of the family if they had special means to know things requisite to make their statements admissible. (*Kanhaiya Lal*, A.J.C.) BALBHADDAR SINGH *v.* SHRIPAL SINGH. **48 I.C. 308 = 21 O.C. 251.**

——S. 32 (5)—*Relationship — Hearsay evidence—Fosterage—Admissibility.*

EVIDENCE ACT (I of 1872), S. 32—Statements against interest.

Hearsay evidence is inadmissible to prove connection by fosterage. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) SURAIYA QUDR *v.* QUDSIA BEGAM. **24 I.C. 643 = 1 O.L.J. 281.**

Special means of knowledge.

——S. 32—*Special means of knowledge—Relationship.*

A statement by a Muzumdar that the estate should be handed over to a certain person by name A as the sole wife of Zamindar is admissible under S. 32, as made by a person having special means of knowledge. (*Wallis*, C.J. *and Burn*, J.) KRISHNA THEVAR *v.* RAMASAMI PANDIA. **(1917) M.W.N. 201 = 33 M.L.J. 277 = 39 I.C. 263 = 40 Mad. 871.**

——Ss. 32 (5), 21 (1)—*Special means of knowledge—Statement as to date of birth, when admissible.*

Statements as to the date of birth of a person contained in his deposition and in affidavits filed by him are admissible in evidence under S. 21 (1) read with S. 32 (5) if made by a person having special means of knowledge whether personal or hearsay. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. **(1916) M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210**

——S. 32, (5)—*Special means of knowledge—What is.*

It is not necessary that the special means of knowledge of a witness should be of a particular character in order to make his statement admissible. It is for the Court to decide whether the witness had such special means or not. (*Oldfield and Tyabji*, JJ.) RAMKRISHNA AIYAR *v.* CHINNA VENGAMMAL. **26 I.C. 110.**

Statements against interest.

——S. 32 (3)—*Statements against interest—Admissibility.*

A statement made by the manager of a joint Hindu family, since deceased, that he bought properties out of his own earnings as a provision for the son-in-law and in his name, is admissible in evidence against the surviving members of the family who claim that the property was acquired *benami* for the joint family. (*Lord Buckmaster.*) SURAJ NARAIN *v.* RATAN LAL. **40 All. 159 = 21 C.W.N. 1065 = 20 O.C. 211 = 2 P.L.W. 160 = 33 M.L.J. 180 = 15 A.L.J. 684 = 19 Bom. L.R. 737 = 22 M.L.T. 121 = 26 C.L.J. 267 = 6 L.W. 509 = (1917) M.W.N. 477 = 4 O.L.J. 763 = 40 I.C. 988 = 44 I.A. 201 (P.C.).**

——S. 32 (3)—*Statements against interest—Documents not* inter partes *— Boundary dispute.*

Recitals in documents not *inter partes* are ordinarly irrelevant unless the statements in the documents can be brought within S. 32 of

EVIDENCE ACT (I of 1872), S. 32—Statement against interest,

the Evidence Act. Statements in documents not *inter partes* limiting the interest of the executants by declaring the boundaries of certain land fall within S. 32, cl. (3) and are, therefore, admissible in evidence. (*Newbould*, J.) REAJADDI SARKAR *v.* GANGA CHARAN. **53 I.C. 863.**

———S. 32 (3)—*Statements against interest—Recital in document—Admissibility.*

A recital in a deed of sale, that the land conveyed is limited by certain boundaries is an admission that his proprietary interest does not extend over any land outside the boundaries mentioned, and as such is admissible under S. 32 (3). (*Mookerjee and Beachcroft*, JJ.) AMBAR ALI *v.* LUTFE ALI. **21 C.W.N. 996 = 25 C.L.J. 619 = 41 I.C. 116 = 45 Cal. 159.**

———Ss. 32 (3) and 18—*Statement against interest.*

The statement of the vendor in a sale-deed as to the ownership of a land included as a boundary of the landlord is relevant under S. 32 (3) as a statement against interest and his evidence against the vendee and strangers. But such a statement cannot be proved against the vendee as an admission under S. 18. (*Chatterjee and Newbould*, JJ.) KANGALI MOLLA *v.* BENI MADHAB BISWAS. **34 I.C. 534.**

———S. 32 (3)—*Statements against interest—Cess Act, S. 95—Road cess return filed by Hindu widow—Admissibility in evidence in favour of reversioner.*

A Road-cess Return filed by a Hindu widow while she was in possession of the estate, is admissible in evidence under S. 32 (3) in favour of the reversioner and S. 95 of the Cess Act does not bar its admissibility. (*Mookerjee and Beachcroft*, JJ.) LACHMI PROSAD CHOWDHURY *v.* JAG MOHANLAL CHAUBEY. **22 I.C. 594 = 18 C.L.J. 633.**

———Ss. 32 (3), (2), 11 and 12—*Statements against interest.*

A vendor describing in a conveyance that the land is limited to certain boundaries makes a statement against his proprietary interest as it admits that the land does not extend over any land outside the boundaries mentioned and is admissible under S. 32, cl. (3). It does not fall under Ss. 11 or 12 or 32, cl. 2. (*Mookerjee and Carnduff*, JJ.) ABDULLA *v.* KUNJA BEHARI. **16 C.W.N. 252 = 12 I.C. 149 = 14 C.L.J. 467.**

———S. 32 (3) and (7)—*Statements against interest by donor at the time of registration of the will.*

Statements made by the testator at the registration of the will and in judicial proceedings relating to the property comprised in the bequest to a charity are admissible under Ss. 6 and 32 of the Evidence Act to prove a general

EVIDENCE ACT (I of 1872), S. 32—Miscellaneous.

charitable intention on the part of the testator. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) MUTHUKRISHNA NAICKEN *v.* RAMACHANDRA NAICKEN. **47 I.C. 611 = 37 M.L.J. 489.**

———S. 32, (3)—*Statements against interest—Conditions of admissibility.*

Under S. 32, the criterion of admissibility of statements against interest made by deceased persons are (1) the deceased must have had personal knowledge of the facts he was stating; (2) the facts stated should have been to the immediate prejudice of the deceased; (3) the statement must have been to the knowledge of the deceased, contrary to his interest; and (4) the interest must be either pecuniary or proprietary. (*Wallis*, C.J. *and Seshgiri Iyer*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. **(1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.**

———S. 32, Cl. (3)—*Statement against interest—Admissibility.*

A statement made by a person against his own interest is admissible in evidence under S. 32, cl. (3) of the Evidence Act. (*Sankaran Nair and Ayling*, JJ.) MANDANA MAHALAKSHMAMMA *v.* MANDANA SORAPPA. **11 I.C. 380 = (1911) 1 M.W.N. 368.**

———S. 32 (3)—*Statements against interest—Statement not against pecuniary interest.*

A statement by a plaintiff as a witness that her father told her that he had mortgaged the land in suit to the defendant is inadmissible under S. 32. (*Saunders*, A.J.C.) MI NGA MA *v.* NGA TALOK PYU. **29 I.C. 607 = (1915) 11 U.B.R. 56.**

———S. 32 (3)—*Statements against interest—Declaration against title.*

Declarations made by persons in disparagement of title to land, if made whilst in actual possession, are admissible in evidence under S. 32 (3) of the Evidence Act. (*Fawcett and Raymond*, J.Cs.) RAMDAS *v.* AJUDHIADAS. **63 I.C. 686 = 14 S.L.R. 137.**

Witness dying during suit.

———S. 32—*Witness dying during trial after examination.*

Where a witness in a suit has been fully examined and cross-examined, S. 32 has no application and if the witness happens to die before the completion of the suit, it is not open to either party to apply for the admission of a statement made by him in a previous suit. (*Chapman and Atkinson*, JJ.) SHAHDEO NARAIN DAS *v.* KUSUM KUMARI. **46 I.C. 929.**

Miscellaneous.

———S. 32—*Defamation—Libel—Statement of the deceased.*

The statement of a deceased person, even if true is insufficient to prove the truth of a libel as it lacks the test of cross-examination. A libellous statement of a deceased whose truth

EVIDENCE ACT (I of 1872), S. 32—Miscellaneous.

would have been a complete defence is inadmissible as evidence under this section. (*Scott*, C.J. *and Chandavarkar*, J.) NADIRSAW HORMUSJI SUKHIA *v.* PIROJSAW RATANJI RATNAGAR. 19 I.C. 98 = 15 Bom. L R. 130.

——Ss. 32 (5) and 49—*Custom—Proof of.*

When direct evidence of instances of a custom is not available, persons having special means of knowledge are permitted to testify to it either by their knowledge of the practice of the community or their hearsay information from persons having such special means of knowledge under Ss. 32 (5) and 49 of the Evidence Act. (*Stuart and Kanhaiyalal*, A.J.Cs.) IKABAL NARAYAN *v.* RAJENDRA NARAIN. 21 O.C. 275 = 48 I.C 757 = 5 O.L.J. 701.

——S. 32 (2) and (5)—*Legitimacy—Proof of.*

The appellant's legitimacy being in question the person who challenged it was entitled to prove the fact that the appellant's deceased mother made a statement on a certain occasion that she was a concubine of the appellant's father and not his wife under S. 32 (2) and (4) (5). (*Piggot*, J.) PARBATI *v.* MAHARAJ SINGH. 10 I.C. 188.

——S. 32—*Independent evidence — Appeal—Objection to admissibility.*

Where the document can be brought under S. 32 of the Evidence Act by proof of the death of the person who prepared it or other facts contemplated by that section, it can be used not only as corroborative but as independent evidence. (*Miller*, C.J. *and Mullick*, J.) CHARITTER RAI *v.* KAILASH BEHARI. 4 P.L.W. 213 = 1918 Pat. 145 = 44 I.C 422 = 3 P.L.J. 306.

——S 33—*Deposition in criminal case—Not to be admitted in civil litigation.*

The record of an admission made in the course of evidence given before a Magistrate by the agent for a party, is not admissible in a subsequent litigation when the deponent is alive and available for examination. (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. 43 Cal. 707 = 20 C.W N. 802 = 14 A.L J 621 = (1916) M.W.N. 406 = 31 M L J 1 = 18 Bom. L.R. 490 = 3 L.W. 556 = 24 C L J 116 = 20 M L T. 267 = 33 I.C. 583 = 43 I A. 73 (P.C.).

——Ss. 33 and 145—*Legal testimony—Deposition in prior suit when admissible—Use of, to contradict.*

In the absence of proof of the circumstances specified in S. 33 of the Evidence Act, the importing in bulk in a Civil suit of depositions of witnesses recorded in a criminal trial is a serious irregularity. The depositions could not be used to support the evidence the witnesses gave in Civil suit. Nor could they be used to contradict the witnesses without giving them an opportunity to tender their explanation or to clear up the particular points

EVIDENCE ACT (I of 1872), S. 33.

of ambiguity. (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SRINIVAS PANDIT. 39 Bom. 441 = 13 A.L J. 570 = 19 C.W.N. 729 = 17 Bom. L.R. 527 = 22 C.L J. 1 = 29 M L J. 34 = 18 M.L.T. 1 = (1915) M W.N. 484 = 2 L.W. 611 = 29 I.C. 639 = 42 I.A. 135 (P.C.).

——S. 33—*Subsequent proceeding—Statement in Civil suit—Admissibility of in criminal case between same parties.*

The deposition of the plaintiff in a prior suit is admissible in the prosecution of the defendant for forgery if the plaintiff is dead at the time of the criminal trial. (*Piggott*, J.) DEBI SINGH *v.* EMPEROR. 52 I.C. 383 = 20 Cr. L J. 625.

——Ss. 33 and 70—*Prior depositions—Ex parte decree.*

A witness was produced who stated that he was the sole surviving attesting witness and he swore that the mortgagor had executed the deed. A decree was passed *ex parte* in favour of the plff. Subsequently the *ex parte* decree was set aside at the instance of the mortgagor's widow. When the *ex parte* decree was set aside the surviving attesting witness too had died. A witness was produced to prove the attesting witness's handwriting. This he failed to prove. Both the Courts below dismissed the suit on the ground that the bond had not been proved. *Held*, that the deposition of the attesting witness was not admissible as there was no opportunity for his cross-examination, and that the registration endorsement was no proof of the admission of the executant as required by S. 70 of the Evidence Act. (*Richards*, C.J. *and Piggott*, J.) RAJ MANGAL MISSER *v.* MATHURA DUBAIN. 38 All. 1 = 30 I.C 576 = 13 A L J. 881.

——Ss. 33 and 32 (3)—*Statement by co-accused—Death of maker of the statement—Admissibility in evidence.*

On a trial for forgery one of the accused having made a statement before the enquiring Magistrate and died before the trial commenced, the statement was admitted by the Sessions Judge under S. 32, cl. (1) of the Evidence Act. *Held*, that the statement was inadmissible since its maker had already rendered himself liable to criminal prosecution at the time it was made. (*Scott*, C.J. *and Shah*, J.) EMPEROR *v.* KESHAV NARAYAN. 25 Bom L R. 248.

——S. 33, Proviso 2—*Proceedings under S. 476, Cr. P. Code.*

As the person against whom proceedings have been instituted under S. 476 of the Cr. P. Code, has no right to cross-examine witnesses during that inquiry, the evidence of witness in that enquiry, who is not forthcoming at the trial started on the result of such inquiry, is not admissible under S. 33. (*Batchelor and Shah*, JJ.) BAKIRSHAHEB AMIR SAHEB *v.* EMPEROR. 17 Cr. L.J. 249 = 34 I.C. 969 = 18 Bom. L.R 284.

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———S 33—"*Material witness if possible should be produced before Court.*"

The deposition of a material witness, which was relied upon by the Judge in his summing up to the jury, who resided within the jurisdiction and could be procured without unreasonable expense and delay is not to be admitted under S. 33 as justice requires that such a witness should be examined in the presence of the accused. S. 33 must be very strictly construed. (*Beaman and Macleod*, JJ.) LAXMAN TOTARAM *v.* EMPEROR.

16 Cr. L J. 754=31 I.C. 354=17 Bom. L.R. 590.

——S. 33—*Evidence—Persons not parties to proceedings—Inadmissibility.*

A Court has no jurisdiction to decide a matter on evidence recorded in another proceeding to which the applicant was not a party. (*Holmwood and Mullick*, JJ.) KRISTO KUMAR DAS *v.* GIRISH CHENDRA PODDAR.

27 I.C 704.

——S. 33—*Cannot be found.*

A mere statement of a police officer that a witness is a man of another district and cannot be found is not a sufficient ground for the reception of evidence under S 33. (*Woodroffe and Mookerji*, JJ.) EMPEROR *v.* KANGAL.

15 Cr. L.J. 713=26 I.C. 161=41 C. 601.

———S. 33—*Deposition in registration inquiry—If and when admissible.*

Where witnesses examined and cross-examined on solemn affirmation in a registration enquiry under S. 74 of the Registration Act, are dead, their depositions will be admissible in evidence under S. 33 of the Evidence Act in a subsequent suit. (*Sharfuddin and Richardson*, JJ.) JEKALI SHEIKH *v.* TAIBANESSA BIBI. **20 I.C. 631=18 C.W.N. 605.**

——S. 33—*Approver—Cross-examination—Sessions trial.*

At a Sessions enquiry an approver was examined in chief but the accused were not asked to, then and there, to cross-examine him and did not in fact cross-examine and he died before trial in the Court of Sessions. *Held*, that it was doubtful whether his evidence was admissible under S 33 and that in any case its value was small. (*Holmwood and Imam*, JJ.) IBRAHIM *v.* EMPEROR. **14 Cr. L.J 70=18 I.C. 406=17 C.W.N. 230.**

———S. 33—*Depositions of witnesses.*

Deposition of witnesses in previous proceedings between the parties can be admitted in their entirety provided the requirements of S. 33 of the Act are fulfilled. (*Mookerjee and Carnduff*, JJ.) IMAM BANDI *v.* MATA SUDAI.

13 I.C. 678=15 C.L.J. 621.

———S. 33—*Deposition in prior case—Witnesses dead.*

Quære.—Whether depositions of witnesses, who are dead, in an old case bearing on a question of custom can be given in evidence in a later case? (*Abdul Raoof and Campbell*, JJ.) RAM NARAIN *v.* MT. HAR NARINJAN KUAR.

4 Lah. 297=1924 Lah. 116.

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———S. 33—*Statement of living person in previous judicial proceeding—Admissibility.*

A conviction based on the statements of living witnesses on a prior trial is unsustainable. (*Broadway*, J.) MAHOMED KHAN *v.* MUSSAMMAT FATTAN. **12 P.L.R. 1919.**

——Ss. 33 and 165—*Depositions of witnesses in prior suit—Admissibility by consent.*

If the parties to a suit agree, the evidence given in a previous judicial proceeding between them is admissible even in a case in which the conditions prescribed by S. 33 of the Act do not exist. (*Wallis*, C.J., *Coutts Trotter and Krishnan*, JJ). JAINAB BIBI SAHEB *v.* HYDERALLY SAHEB. **33 M L J 532=28 M.L.T. 23=(1920) M W N 360=12 L W 64=56 I.C 957=43 Mad. 609 (F B.).**

———S. 33—*Enquiry before Sub-Registrar—Deposition of witnesses—Admissibility of*

The deposition of witnesses (since deceased) made at an enquiry held by a Sub-Registrar under S. 41, cl. (2) of the Registration Act regarding the genuineness of a will are admissible in evidence in a subsequent suit between the same parties raising a question as to the genuineness of the will, provided the witnesses are dead and the parties had an opportunity of cross-examining them at the enquiry before the Sub-Registrar. The "first proceeding" referred to in S. 33 of the Evidence Act need not be a judicial proceeding. (*Wallis*, C.J. *and Seshagiri Aiyar*, JJ.) LANKA LAKSHMANNA *v.* LANKA VARDHANAMMA. **42 M. 103=35 M L.J. 657=(1918) M W N. 913=49 I.C. 638=9 L.W. 98.**

———Ss. 33 and 165—*Evidence before Sub-Registrar—Admissibility by consent.*

Evidence recorded in prior proceedings cannot be treated as such in subsequent judicial proceedings by consent of parties unless the case falls under S. 33. A judgment based on such evidence is void. (38 M. 160, Diss. from. (*Ayling and Seshagiri Iyer*, JJ.) PONNUSAWMI PILLAI *v.* SINGARAM PILLAI.

41 M. 731=34 M.L.J. 525=46 I C. 849=(1918) M W N 768.

[Overruled by 56 I.C. 957=43 Mad. 609.]

——S. 33—*Interrogatories—Answers.*

Answers to interrogations may be admitted under S. 33 of the Evidence Act where cross interrogatories have been administered to the person making the interrogatories as such interrogatories satisfy the requirement that the opposite parties have the "right and opportunity to cross-examine." (*Ayling and Seshagiri Aiyar*, JJ.) NARAYANA BHARATIGAL *v.* ITTULI AMMA. **39 I.C. 893.**

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———S. 33—*Evidence taken before a person was added as party to suit—Objection to admissibility, if can be taken in second appeal.*

A defendant was newly added during the course of a trial by direction of Court. He raised no objection to the evidence taken at a previous stage of the proceedings going on record nor desired that it should be reheard; his interests however were fully represented by another defendant and he was fully cognisant of the steps taken by the former to prove their common case. On appeal by both of them jointly against the judgment of the trial Court and the objection as to the admissibility of the evidence against the new defendant, *held*, that the objection should be disallowed and that S. 33 of the Evidence Act did not apply. (*Napier and Srinivasa Iyengar*, JJ.) RANGASWAMY NAIDU *v* SUNDARARAJULU NAIDU.

35 I.C. 52 = 31 M.L.J. 472

———S. 33—*Deposition in prior suit—When admissible.*

Depositions of deceased witness in a prior litigation are admissible under S. 33 only where not only the questions in issue are substantially the same in the two proceedings but the proceedings have been between the same parties or their representatives in interest. 28 M.L.J. 669, Dist. (*Abdur Rahim and Phillips*, JJ.) RAM BHUSHAN *v.* VIDYAVARDI. **34 I.C. 875.**

———Ss. 33 and 58—*Duty of Court while admitting statement of absent witness—Statement of public prosecutor—Consent of accused.*

Under S. 33 of the Act it is the duty of the Court to satisfy itself that the presence of the witness cannot be obtained without an amount of delay or expense which it considers unreasonable before the statement of the witness in a previous judicial proceeding can be admitted. The mere statement of the public prosecutor to the effect is not sufficient. There must be independent evidence, 2 A. 646; 3 M. 48; 41 C. 601; 5 C. 958, Foll. *Prima facie* the consent of the accused or his counsel is presumptive evidence of the absence of prejudice. (*Spencer and Seshagiri Iyer*, JJ.) ANNAVI MUTHURIYAN *v.* EMPEROR. **28 M L J. 329 = 17 M.L.T. 214 = (1915) M W.N. 229 = 16 Cr.L.J. 294 = 28 I.C. 518 = 39 M. 449.**

———S. 33—*Former deposition—Suit not between the same parties.*

Evidence recorded in one suit can, by consent of party to another suit, be rendered admissible as evidence in another suit although the former suit was not between the same parties. (*Oldfield and Tyabji*, JJ.) KRISHNA REDDY *v.* SUNDARA REDDY.

26 I.C. 381 = (1914) M.W.N. 931.

———S. 33, Proviso 1—*Representative—Meaning—Deposition in previous litigation—When admissible.*

Where the interests are identical and the object of the litigator is to advance a common claim, depositions in a previous proceedings are admissible in a subsequent one, even against

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persons not parties to the previous suit. "Representatives in interest means persons having the same interest in the subject-matter of the suit. It includes all persons whose rights are litigated *bona fide* by a person virtually on behalf of a class though they themselves are not co-nominees on the record. 23 W.R. 42; 91 Eng. Rep. 1387. (*Pyke* v. *Crouch*), Foll. (*Ayling and Seshagiri Iyer*, JJ.) PATINNHARKURU *v.* RAMAN VARMA.

24 I.C. 519 = 28 M.L.J. 669.

———S. 33—*Conditions in section must be complied with before admissibility.*

The evidence of a witness recorded in one case, cannot be admitted as evidence in another case unless the requirements of the S. 33 are complied with. (*Kanhiyalal*, J C.) DWARKA SINGH *v* EMPEROR. **25 O C. 142 = 24 Cr. L J. 823 = 1922 Oudh. 284.**

———S. 33—*Conditions before admitting evidence.*

Per *May-Oung*, J.—The power given by S. 33, Evidence Act, requires to be exercised with great care and the Court must insist on strict proof before holding that the requisite conditions have been satisfied. The Court must also in the judgment or preferably in a separate order, record the reasons for doing so Per *Lentaigne*, J.—It is a far preferable and safer precaution that the Court should record its reasons for holding that the necessary conditions of S. 33 have been complied with, before such deposition is admitted into evidence. The section pre-supposes a consideration of the grounds prior to the admission of the evidence and if the reasons too are recorded prior to the admission, the order would constitute a more convincing proof of the considered adequacy of the grounds than a passage in the judgment subsequently written which may easily assume the appearance of a subsequent statement of excuses for a previous ill-considered action. (*May Oung and Lentaigne*, JJ.) NGA NYO *v.* EMPEROR. **1 Rang. 512 = 76 I C. 817 = 2 Bur. L J. 205.**

———S. 33—*Subsequent proceedings—Criminal trial—Admissibility of evidence in prior trial.*

Evidence taken in trial for dacoity is not admissible in a trial under the Arms Act. (*Twomey*, J.) NGA THA KU *v.* EMPEROR.

17 Cr. L.J. 512 = 36 I C 480 = 10 Bur. L.T. 121.

———S. 33—*Representative, who is.*

A purchaser of equity of redemption is a representative in interest of the mortgagor for the purpose of S.33. (*Hartnoll and Ormond*, JJ.) MA SHWE LA *v.* MY KYIN. **26 I.C. 111 = 8 Bur. L.T. 104.**

———S. 34—*Books of account—Entries in—Value of.*

Books of account are important pieces of evidence and if an entry therein is proved to have been made in the ordinary course of

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business it is material corroboration of the statement of witnesses. (*Fletcher and Walmsley*, JJ.) LAL MOHAN SAHA *v.* TAZIMADDIN. 49 I.C. 756.

——S. 34—*Thak map—Entry — Sixty years old—If admissible.*

An entry in thak map made about 60 years ago is admissible in evidence. (*Rampini*, A.C.J. *and Ryves*, J.) TARAKISHORI CHAOUDHARI *v.* NABIN CHANDRA KARMOKAR. 30 I.C. 83= 21 C.L.J. 637.

——Ss. 34, 9 and 11—*Absence of—Entry in account book—Relevancy of.*

The absence of an entry in a book of accounts is a relevant fact under Ss. 9 and 11 of the Act, and not under S. 34 to prove the alleged payment, but the weight to be given to such absence depends upon the circumstances of each case. (*Mookerjee and Beachcroft*, JJ.) GANGARAM AGARWALA *v.* LACHURAM KISANDAYAL. 28 I.C. 705=19 C.W.N. 611.

——S. 34—*Entries in books of account—Value of—How to be proved.*

Where reliance is placed upon books of account it has to be proved that they were regularly kept in the course of business and the entries themselves have to be proved and mere assertions that this or that page was written by a particular writer will not suffice. (*Mookerji and Carnduff*, JJ.) IMANBANDI *v.* MATASUDDI. 13 I.C. 678=15 C.L.J. 621.

——S. 34—*Entries— Evidence of past transaction.*

In a suit for the recovery of Rs. 53-12 on the allegations that the defendants had irrigated their fields from the plaintiff's well and were liable to pay at the rate of Rs. 4 per bigha according to an agreement arrived at between the parties. *Held* that the *bahi* entries in plaintiff's *bahi* showing that the defendants had been paying the water rate in previous years at the rate demanded by the plaintiffs taken along with the oral evidence produced sufficiently prove the plaintiffs' claim. (*Moti Sagar*, J.) PRABBHU DIYAL *v.* RAM CHANDER. 1923 Lah. 595 (1).

——S. 34—*Mere production, not sufficient.*

Mere production of books of accounts without proof is not sufficient to charge a defendant with liability although it may have been shown that they had been regularly kept in the course of business. 13 I.C. 673 and 22 I.C. 403, Fol. (*Abdul Raoof and Harrison*, JJ.) ABDUL HAQ *v.* THE FIRM SHIVJI RAMKHEM CHAND. 1922 Lah. 338.

——Ss. 34 and 32 (2)—*Account book entries—Corroboration.*

Entries in account books which are relevant only under S. 34 are alone insufficient to charge a person with liability without evidence in corroboration of the entries. Where the entries are, however relevant under S. 32 (2) they do not require, corroboration. (*Shadi Lal*, C.J.) RANI *v.* THE FIRM BAHADUR MAL BHUTI MAL. 63 I.C. 946.

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——S. 34—*Admissibility of entries in the face of admission of liabilities by defendant—Not material.*

The admissibility or otherwise of the entries does not avail when the defendant admits the debt contracted, to which the entry refers. (*Shah Din and Rossignol*, JJ.) FAZE AHMED *v.* JIWAN MAL. 31 I.C. 800= 158 P.W.R. 1916.

——S. 34—*Entry in account books—Value of.*

A mere entry in an account book without something more is insufficient to charge a person with liability. (*Johnstone and Shadi Lal*, JJ.) ABDUL ALI *v.* PURAN MAL. 82 P.R. 1914=25 I.C. 560=277 P.L.R. 1914.

——Ss 34 and 114—*Books of accounts tampered with—Presumption.*

When it is found that the account books have been tampered with deliberately, the owners of the books will be very strongly presumed to have fabricated the accounts. (*Rattigan and Beadon*, JJ.) POKHAR DAS *v.* UTTAM CHAND. 49 P.W.R. 1914=22 I.C. 560= 77 P.L.R. 1914.

——S. 34—*Entry in book of account—Evidence necessary of proof—Nature of.*

As far as possible it is necessary that independent and trustworthy evidence should be let in, in support of entries in books of accounts. A mere statement of the plaintiff is not sufficient for the purpose. (*Rattigan and Beadon*, JJ.) GANGARAM *v.* KAKARAM. 47 P.L.R. 1914= 22 I.C. 403=53 P.W.R. 1914.

——S. 34—*Entries in books of account—Corroboration.*

S. 34 of the Evidence Act only lays down that a plff. cannot obtain a decree by merely proving the existence of certain entries in his book of accounts even though these books are shown to be kept in the regular course of business. He will have to show further by some independent evidence that the entries represent real and honest transactions and that the moneys were paid in accordance with those entries. No particular forms or kind of evidence in addition to the entries is required. Any relevant facts which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished in the books of accounts, if true. (*Abdur Rahim and Oldfield*, JJ.) M. S. YESUVADIYAN *v.* SUBBA NAICKER. 52 I.C. 704.

——S. 34—*Account book entry in value of—Presumption—Proof.*

It is not the necessary or ordinary effect of a credit entry in an account book in favour of a person that the sum so entered thereby is transferred to him; all that it implies is that he is entitled to the amount from the person in whose

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account the entry occurs. How the former became so entitled has to be proved *aliunde*, the ordinary presumption being that such amount had been paid in by the person to whom it is credited. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) SABJAN SAHIB *v.* ABDUL AZEEZ SAHIB. **42 I.C. 684.**

———S. 34—*Entries in account books—Admissibility—Objection to.*

Objection to admissibility on the ground that entries were not proved to have been kept in the regular course of business, ought to be taken at the time of the trial where entries in certain books of account are provod to be in the handwriting of a deceased person. (*Abdur Rahim and Phillips*, JJ.) *In re* MADU CHIMNAGI REDDI. **32 I.C. 665=17 Cr. L.J. 73.**

———S. 34—*Books of account—Admissibility—Conditions of.*

An entry to be admissible under S. 34 of the Evidence Act must be in a book of account regularly kept in the course of business which if not admitted must be formally proved. A collection of sheets of paper bound together with the intention that it should be permanent is a "book" but a book containing entries of items of which no account is made at any time is not a bock of account. For purposes of admissibility Cash Books, Ledgers, and Day Books are equal though they may differ in the weight to be given to each. (*Stanyon*, A. J. C.) MUKUNDRAM *v.* DAYARAM. **23 I C. 898= 10 N.L.R. 44.**

———S. 34—*Accounts*—Lekha Bahi—*Entries in—Evidentiary value of.*

In the absence of corroborative evidence no reliance can be placed on the entries of oral loans appearing in a *Lekha bahi*. The account itself is not one kept in the ordinary course of business from day to day. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL BAHADUR *v.* ZALIM SINGH. **27 I.C. 881=2 O.L J. 1.**

———S. 34—*Account books not written from day to day—Admissibility.*

Where accounts are originally written in wrong slips of paper and after an interval are entered in regular books, the latter cannot be rejected in evidence on the mere ground that the entries in them were not made regularly from day to day. (*Chamier*, J. C.) MANGLI PRASAD *v.* MANDIR DAS. **11 I.C. 95.**

———S. 34—*Copy of account book—Admissibility of.*

An account bock, though a copy of another account book, will be admissible in evidence if it is itself copied and kept in the ordinary course of business. 27 C. 118; 4 B, 576, Foll. (*Maung Kin*, J.) MAUNG SIL KON *v.* MA TU YA. **42 I.C. 117.**

———S. 34—*Books "regularly kept in the course of business"—Meaning of.*

In order that books may be regularly kept in the course of business they must be kept in accordance with a uniform practice in the

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current routine of business of the person to whom they belong. The particular method of keeping the books may affect their value as evidence. (*Pratt*, J.C. *and Crouch*, A. J. C.) RAMCHANDRA *v.* EMPEROR. **14 Cr. L J. 262=19 I C. 534=6 S.L.R. 195.**

———S. 35.

See also EVIDENCE ACT, S. 74.

———S. 35—Wajib-ul-arz—*Khewat register—Entries in—Evidentiary value of.*

Entries in the Khewat register of a village and the *wajib-ul-arz* are evidence of facts stated therein and their importance may vary with circumstances. They are not by themselves conclusive evidence of the facts recorded. It may turn out that they are in accordance with the general bulk of the evidence in the case; they may supply gaps in it; and they may in short, form a not unimportant part of the testimony in case. They should not however be given any greater weight. (*Lord Shaw.*) NAGESHAR *v.* GANESHA. **42 All. 368= 7 O.L.J. 48=2 U P.L.R. (P.C.) 37= 38 M.L J. 521=23 O.C. 1=18 A.L.J. 532= 22 Bom L.R. 596=56 I.C. 306= 28 M.L.T. 5. (P.C.)**

[On appeal from 36 I.C. 780=3 O.L.J. 454.]

———S. 35—*Inam Register—Entries in—Value of—Tenure of land.*

The preparation of the Inam Register (1864) was a great Act of state and the result of elaborate inquiries and though the statements as to the character of tenure set forth in the Register cannot displace actual and authentic evidence in individual cases, they are in the absence of such evidence, very important. (*Lord Shaw*,) ARUNACHALAM CHETTI *v.* VENKATACHALAPATI GURUSWAMIGAL. **43 Mad. 253=24 C.W.N. 249= 37 M L J. 460=26 M L T. 479= (1919) M.W.N. 850=10 L.W. 642= 17 A.L.J. 1057=46 I.A. 204= 53 I.C. 288=22 Bom. L.R, 457 (P C.)**

[Reversing 33 I.C. 216=(1915) M,W.N. 650.]

———S. 35—*Register of Minhaidari Villages.*

A register of Minhaidari villages being an official document, in the absence of anything to show that any particular part of it was in excess of the official duty by reason of which it came into existence and that in consequence that part being not admissible, is admissible in evidence under S. 35 of the Evidence Act. (*Lord Parker*). RAI KISHORE DEO BAHADUR *v.* BENI MAHTO. **22 C.W N 439= (1918) M.W.N. 305=23 M L T. 382= 20 Bom L R 712=28 C.L J. 1= 47 I.C. 1=12 Bur. L.T 88 (P.C.).**

———S. 35—*Govt. Records—Dispute as to ownership of land.*

The plffs. claimed a large tract of land formerly under the river Ganges as forming part of the permanently-settled Zemindari.

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Three sets of documents were relied on, *viz.*, firstly, a plan of survey conducted by Major Rennel between the years 1764 and 1773; secondly the hakikhat chowhuddibandi (boundary) papers which were returns submitted to the Government in a Government form in pursuance of Govt. request for the year 1799 and made by the owners of the zemindari and sent in to the Government; thirdly the Govt. Survey map made in 1859. *Held*, that they were all admssible in evidence as they were in the custody and the possession of the Government, by whom they were carefully kept and certainly regarded as documents of great importance, that as between the zemindars and Govt. they must be accepted as *prima facie* accurate and that the evidence established the plff.'s claim except that the bed of the river was the property of the Government. (*Lord Buckmaster*). HARADAS ACHARYA CHAUDHURI *v.* THE SECRETARY OF STATE FOR INDIA. **26 C.L.J. 590 = (1918) M.W.N. 28 = 43 I.C. 361 = 22 M.L.T. 488 = 20 Bom. L.R. 49 (P.C.).**

——S. 35—Riwaj-i-am — *Entries in—Value of.*

The *Riwaj-i-am* of a district is a public record prepared by a public officer in discharge of his duties and under Government rules and is clearly admissible to prove the facts stated therein. The *Riwaj-i-am*, though subject to rebuttal is strong evidence of the custom recited. (*Mr. Ameer Ali*). BEG *v.* ALLAH DITTA. **44 Cal. 749 = 12 P.W.R. 1917 = 21 M.L.T. 310 = 32 M.L.J. 615 = 19 Bom. L.R. 388 = 45 P.R. 1917 = 18 A.L.J. 526 = 21 C.W.N. 842 = 26 C.L.J. 175 = 38 I.C. 364 = 44 I.A. 89 (P.C.). [Reversing 48 P.R. 1909 = 122 P.L.R. 1909 = 2 I.C. 79 = 72 P.W.R. 1909.]**

——S. 35—*Mahalwar register.*

Copies of entries in *Mahalwar* Register kept under S. 4 of Act VII of 1876 can be admitted in evidence but mere signature of the Supdt. of Survey on a corner does not make the document one kept by him (*Lord Shaw*). MUTSADDI MAIN *v.* MAHOMED IDRIS. **34 I.C. 283 = 19 C.W.N. 764 (P.C.).**

——S. 35—Thakbast *proceedings—Proceedings before revenue officers—Value of.*

Though decisions in proceedings before the court of the *Thakbast* Deputy Collector and those under Reg. XI of 1819 do not estop the parties to the same extent as those in regular proceedings in courts of law, such determinations are obviously of high authority and when acquiesced in by all the parties interested for a length of time and made the basis of important transactions, should not be disturbed unless upon the clearest proof that they are erroneous. (*Lord Atkinson.*) SURJA KANTA ACHARJYA *v.* SARAT CHANDRA ROY CHOWDHURI. **18 C.W.N. 1281 = 16 M.L.T. 290 = 27 M.L.J. 365 = 1 L.W. 807 = (1914) M.W.N. 757 = 16 Bom. L.R. 925 = 25 I.C. 309 = 20 C.L.J. 563 (P.C.).**

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——S. 35—*Death and birth register—Entries in—Admissibility of.*

An entry in the register of birth and deaths kept by a village chaukidar is not admissible under S. 35 after the chaukidar's death when it has not been proved to have been made by the chaukidar himself. (*Lindsay and Gokul Prasad*, JJ.) SHEO BALAK *v.* GAYA PRASAD. **20 A.L.J. 601 = L.R. 3 A. 468 = 1922 All. 510 (1).**

——S. 35—*Entries in Khewat.*

Entries in Khewat as to certain persons (defts.) being in possession of certain land as mortgagees which have been attested by those persons amount to an admission by those persons that they are in possession as mortgagees. (*Walsh*, J). PAKARIA *v.* RANJUTA. **34 I.C. 165.**

——S. 35—*Report of Municipal overseer—Admissibility of, in evidence.*

The report of a Municipal overseer as to when the construction of *Chajja* took place is inadmissible in evidence. (*Banerjee*, J.) RAMNATH *v.* MUNICIPAL BOARD OF MUTTRA. **16 Cr. L.J. 78 = 26 I.C. 670 = 12 A.L.J. 740.**

——S. 35—*Report by an official of a Native State admissible as evidence.*

In the case of the appointment of a *Mahant* of a temple in a Native State, the report of the Kotwal of the State in regard to the history of the mahantship of the temple is a public record and as such admissible in evidence. (*Richards*, C.J. *and Banerjee*, J.) BALDEO DAS *v.* GOBIND DAS. **36 All. 161 = 23 I.C. 18 = 12 A.L.J. 179.**

——S. 35—*Municipal register—Entries in—Proof of time of death.*

To prove time of death of a person, entries in the municipal register are inadmissible if not in the handwriting of the witness producing it and when he cannot say who wrote or checked the entries or left the register. 10 I.C. 713, referred to. (*Ryves and Lyle*, JJ.) JIWAN BAKSH *v.* KHAN BAHADUR KHAN. **19 I.C. 528.**

——S. 35—*Settlement records—Entries in.*

There is a presumption until the contrary is proved that the entries in a settlement record are correct. (*Rafique and Piggott*, JJ.) HABIBULLAH KHAN *v.* LALTA PRASAD. **34 All. 612 = 17 I.C. 94 = 10 A.L.J. 190.**

——S. 35—*Patwari papers—Presumption as to correctness.*

There may be a presumption that what is entered in the patwari's papers is correct but that presumption can be rebutted by evidence called in defence. (*Tudball*, J.) KINO JATI *v.* BIRJ NANDAN LAL. **10 I.C. 280.**

——S. 35—*Registering officer's endorsement—Value of.*

The registering officer's endorsement on a registered document is evidence, though not

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conclusive, of the truth of the facts set forth therein. (*Beaman and Hayward*, JJ.) ANAND BAI BHASKAR NILKANTH *v.* NARAIN DHONDE DEV TATTOO. **27 I.C. 478 = 17 Bom. L.R. 49.**

——S. 35 —*Land records—Entry—Effect of.*

The fact that a man's name appears in the Revenue records is not conclusive evidence either of the title or possession. (*Scott*, C.J. *and Rao*, J.) KASHIRAM *v.* RAJARAM. **35 Bom. 487 = 12 I.C. 356 = 13 Bom. L.R. 879.**

——S. 35 —*Partition papers—Value of.*

Much weight cannot be attached to a partition paper in the absence of detailed information as to the history of the document, when it was prepared, by whom, in whose presence, and for what purpose. (*Mookerjee and Chotzner*, JJ.) TARA KUMAR GHOSE *v.* KUMAR ARUN CHANDRA SINGH. **1923 Cal. 261.**

——S. 35—*Certificate of guardianship—Age of minor—Dispute as to—Recital as to date of birth.*

A certificate of guardianship is neither a book nor a register nor a record kept by an officer in accordance with any law but is a certificate as it professes to be, of which there is only one record and which is not a public record or register of any kind but is a document issued to a particular person, giving to that particular person and only to him, a kind of particular authority. On these grounds the certificate could not be regarded as evidence of minority under S. 35 of the Evidence Act. 17 C. 849 ; 18 A. 478, referred to. Orders for the appointment and discharge of a guardian could not be received in evidence to prove the date of the birth of the defendant from the recitals contained therein. (*Mookerjee and Chotzner*, JJ.) HARA KUMAR DE *v.* JOGENDRA KRISHNA ROY. **71 I.C. 336 = 38 C.L.J. 186.**

——S. 35 — *Quinquennial papers — Admissibility of.*

Quinquennial papers prepared by Revenue Authorities under Regn. XLVIII of 1793 are admissible in evidence. (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA *v.* WAZEDALI. **65 I.C. 866 = 34 C.L.J. 141.**

——S. 35—*Survey maps—Thak maps—Presumption—Rebuttal.*

There is a *prima facie* presumption in favour of the accuracy of thak and survey maps and it is for the party who impugns their accuracy to prove his case. Such a map be shown to be incorrect by the admission of parties or adjudication by a Court or by evidence intrinsic or extrinsic to the map in question. (*Woodroffe and Cuming*, JJ.) TARAMONI CHAUDHURANI *v.* GOPAL DAS CHAUDHURY. **65 I.C. 182.**

——S. 35—*Survey Khatian—Road cess returns—Evidentiary value of.*

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A cadastral survey Katian must be taken to be correct unless there is evidence to the contrary. Road cess returns filed by a landlord are no evidence against the tenants. (*Chaudhuri and Cuming*, JJ.) MAHAMAD GURAN CHOUKIDAR *v.* BASARAT ALI. **56 I.C. 645.**

——S. 35 —*Settlement Khatian—Entries in.*

Entries in the Settlement Khatian afford *prima facie* evidence by the truth of the statements. (*Mookerjee and Carnduff*, JJ.) AZMAT *v.* BISHEN PRAKUR. **52 I.C. 650 = 29 C.L.J. 607.**

——S. 35—*Chittas—Bengal Estates Partition Act—Admissibility in evidence against landlord.*

The map and chitta prepared by the partition Amin under the provisions of S. 54 of the Bengal Estates Partition Act and proved to have been accurately prepared or to have been accepted and acted upon by the landlord can independently of S. 35 of the Evidence Act be admitted in evidence against the landlord for the purpose of proving what lands were held by what tenants. (*Teunon and Cuming*, JJ.) DINANATH CHANDA *v.* NAWABALI. **49 I.C. 984.**

——S. 35—*Perganah register—Konungo Register—Thak Map and statement—Admissibility of.*

The Perganah and Konungo Registers are not punctually kept and are not admissible in evidence to prove an omission of an entry therein ae to *lekheraj*. The konungo account and the General and Mauzawar Registers being intended to facilitate the collection of the Government dues, there was no authority to enter therein *lekheraj* not the subject-matter of resumption proceedings. The Thak officers not being empowered to measure and record lekherajas of less than 50 bighas in area, the omission of lekherajas in the Thak statement is not of any probative value. (*Mookerjee and Walmsley*, JJ.) BIPRA DAS PAL CHOWDHURY *v.* MANORAMA DEBI. **45 Cal. 574 = 47 I.C. 49 = 22 C.W.N. 396.**

——S. 35 —*Partition proceedings— Regulation XIX of 1814.*

Certified copies of the papers in the Collectorate which *prima facie* appear to be the record of a partition made in a proceeding under Regulation XIX of 1814 between the predecessor of the parties to a suit are good and admissible in evidence apart from S. 35 of the Evidence Act. (*Richardson and Walmsley*, JJ.) KHETRA NATH MANDAL *v.* MAHOMED ALLA RAKHA. **46 I.C. 921 = 23 C.W.N. 48.**

——S 35 —*Draft record-of-rights—Entry in.*

An entry in a draft record-of-rights that a certain tank is known by a certain name is not

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admissible in evidence. (*Mookerje and Beachcroft*, JJ.) AMBAR ALI *v.* LUTFE ALI.
45 Cal. 159=21 C.W.N. 996=41 I C 116=25 C.L.J. 619.

——S. 35 —*District Gazetteer—Duties of Choukidars.*

The Bengal Dist. Gazetteer may be referred to by the Court for the purpose of seeing whether the duties of Simanadars are the same as the duties of Chaukidars (mentioned in Sch. I of Act VI of 1870 B.C.)(*Jenkins*, C.J. *and Holmwood*, J.) LALU DOME *v.* BEJOYCHAND.
43 Cal. 221=33 I.C. 553=20 C.W.N. 404.

——Ss. 35 and 13—*Chittas—Assessment proceedings—When admissible.*

Proceedings taken for assessment of rent upon rent free lands, the petition originating the proceedings, reports of the Collector and orders of the Board of Revenue, altogether furnish a valuable evidence as to the recognition by the Govt. of the right of the plff.'s predecessors in title to hold the land rent-free. Chittas prepared by Govt. for explaining and as part of proceedings taken for assessment of rent upon lands said to be improperly held rent-free are admissible in evidence when coupled with resumption proceedings. An entry in a public register kept for the public benefit under the sanction of official duty is relevant under S. 35 whether the clerk making the entry had personal knowledge or not or whether the register was a copy of a previous register which had become untidy. (*Chatterjee and Chapman*, JJ.) WILLIAM GRAHAM *v.* PHANINDRA NATH MITTER.
31 I.C. 41=19 C.W.N. 1038.

——S. 35—*Postal endorsements—Proof.*

An endorsement on the cover of a letter by a postal peon is at best a record of a statement of the peon and must be proved by calling him as a witness unless the statement becomes admissible under S. 32 (2) or S. 33. Such an endorsement is not admissible even as a statement made by a public officer in the discharge of his duty. (*Mookerjee and Walmsley*, JJ.) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATTA. **20 C.L.J. 455=26 I C. 962=19 C.W.N. 489.**

——S 35—*Hunter's Statistical Survey—Private rights.*

Reference cannot be legitimately made to statements in Hunter's statistical account of Bengal for establishing private rights. (*Jenkins*, C J, *Harrington and Mookerjee*, JJ.) AHMADI BEGUM *v.* MAHASY TARAKANAT GHOSE.
17 C.W.N. 1173=21 I C. 233=18 C L.J. 399

——S. 35—"*Butwara Khasra*"—*Bengal Estates Partition Act (VIII B.C. of 1876).*

A "Butwara Khasra" prepared under Act VIII of 1876 is not a record within S. 35 of the Evidence Act and cannot be relied upon for rebutting the presumption raised by the

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"Record of Rights". (*Jenkins*, C J. *and Chatterjee*, J.) NANDALAL PATHAK *v.* CHANURPAT DAS. **17 C L.J. 462=18 I C 143=17 C W.N 779.**

——S 35—*Revenue papers—Admissibility.*

In order that rent collection papers produced by an officer of the landlord who deposed that they were in his custody, may be admissible. Evidence must be let in as to who wrote the papers and who collected the rents. 10 C.L.R. 545, Foll. 22 W.R. 549, Diss (*Mookerjee and Beachcroft*, JJ). AKTOWLI *v.* TARAK NATH GHOSH. **16 C.L.J. 328=17 I.C 266=17 C.W.N. 774.**

——S. 35—*Settlement records.*

The Settlement Records prepared under Reg. VII of 1882 are relevant under S. 35. (*Chatterjee and Teunon*, JJ.) RAGHUNANDAN *v.* BIBHUTI. **12 I.C. 147=39 Cal. 304.**

——S. 35—*School Register, value of.*

Certain entries from a school register at Bikaner which were not proved, are not sufficient to show that the defendant was actually at Bikaner at the time of the entries. (*Moti Sagar*, J.) MT. CHANDO *v.* SRI RAM.
1923 Lah. 607.

——S. 35—*Letter of Govt. of India.*

A letter of the Govt. of India in which Anaesthesine is included in the list of recognised preparations of cocaine cannot be admitted in evidence since it is a well known fact that Anaesthesine is not a product of cocaine. (*Scott-Smith and Le-Rossignol*, JJ.) BISHANDASS *v.* EMPEROR.
18 Cr. L.J. 934=42 I C. 166=32 P.W.R. 1917 (Cr.).

——S. 35—*Settlement records—Entry—Value of.*

An entry, in a previous settlement, if changed by another in a latter settlement without there being any reason or record for such a change, makes the latter entry unauthorised without any evidentiary value. (*Johnstone and Shah Din*, JJ.) BUDHA KHAN *v.* MOHAMMAD. **31 I C 287=133 P.W R. 1915.**

——S. 35—*Settlement Records and Jamabandis—Correctness of.*

In the absence of satisfactory evidence to the contrary, entries in the Settlement Records and the annual *jamabandis* must be accepted as correct. (*Shadi Lal*, J). MILKHI MAL *v.* GULAB SINGH. **79 P W.R. 1915=29 I C. 893=154 P.L.R. 1915.**

——S. 35—*Report of Tahsildar—When evidence.*

The report of the Tahsildar when acting as a commissary to the Court is reliable evidence. (*Le Rossignol*, J.) GIRDHARI LAL *v.* ABDUL RAHIMAN. **39 P L R. 1915=28 I.C. 87=226 P.W.R. 1915.**

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——— Ss. 35 and 74—*Revenue Records and* Jamabandis—*Entries in—Value of.*

Where Revenue Records and *Jamabandis* were in favour of the deft.'s and plff.'s predecessor in title, agreed to the mutation in deft.'s name. *Held*, that title having passed to the defts. plff.'s possession was only permissive and in the capacity of co-sharers could not ripen into ownership. (*Johnstone and Shadi Lal*, JJ.) THIRAJ *v* KASIM.
48 P.W.R. 1915=26 I.C. 481=
124 P.L.R. 1915.

——— S. 35—*Revenue Records—Entry in—Proof of title.*

The proceedings of a Revenue Court demarcating the boundaries of villages are not the only tests of title to any land in dispute included in the village. (*Shah Din*, J.) AMAR SINGH *v*. BHOLA. 26 I C. 341=
240 P.L.R. 1914.

——— S. 35—*Settlement—Records of recent settlements—Evidentiary value.*

The records of the recent settlements can be relied on more than those of the old ones. (*Johnstone and Chevis*, JJ.) ANWAR ALI *v*. RAM SARUP. 180 P.L R. 1914=
24 I.C. 903=81 P.W.R. 1914.

——— S. 35—*Register of deaths — Chaukidar's Death and Birth Registers, entries in—Value of.*

Entries in Chaukidar's Death and Birth Registers are valuable evidence of the facts mentioned therein. (*Rattigan and Beadon*, JJ.) UTTAM DAS *v*. CHANAN DAS. 51 P.R. 1913=
283 P.L R. 1913=20 I C. 462=
200 P.W.R. 1913.

——— S. 35—*Mutation Register—Entries in—Evidence.*

Where a gift of land is followed by possession as well as mutation of names in the Revenue Registers, there can be no doubt as to the factum of the gift. (*Chevis*, J.) HYAAT *v*. RAMZAN. 149 P.W.R. 1912=16 I.C. 889=
159 P.L.R. 1912.

——— S. 35—*Report made by Tahsildar to Collector in land acquisition case is admissible.*

A report made after local enquiry by a Tahsildar under the orders of the Collector in a land acquisition case is admissible in evidence under S. 35 of the Evidence Act. (*Krishnan and Ramesam*, JJ.) RATHNAM ASARI *v*. SECRETARY OF STATE FOR INDIA.
44 M.L.J. 132=17 L.W. 415=
32 M.L T. (H. C.) 279=1923 Mad. 332.

——— Ss. 35, 40 and 44—*Recitals of relevant act in a judgment not* inter partes—*not admissible.*

A recital in a judgment not *inter partes* of a relevant fact is not admissible in evidence under S. 35 of the Evidence Act. The cases on the subject reviewed and discussed. *Quaere*,—

EVIDENCE ACT (I of 1872), S 35.

Whether secondary evidence of admissions of parties to a suit or their predecessors in title can be given by reference to extracts from judgment when the admissions are relevant and the originals contained in the admissions are not forthcoming. (*Coutts Trotter and Kumaraswami Sastri*, JJ.) TRIPURANA SEETHAPATI RAO DORA *v*. ROKKAM VENKANNA DORA.
45 Mad 332=
42 M.L J. 324=15 L W. 316=
30 M.L.T. 160=(1922) M.W N. 147=
1922 Mad. 71.

——— Ss. 35 and 48—*Statement of public servant—Recital in public record.*

A recital in public record as to a statement made by a public servant with reference to a particular statement of the grant by the Government may be admitted, under S. 35 of the Evidence Act as proving that the public servant made the statement that he is stated to have made, if the fact that he made such a statement is a relevant fact. But such a recital would not be admissible under S. 48 where a specific right claimed by a particular individual and not a general right is in question. (*Wallis*, C.J. *and Ayling*, J.) SANKARACHARYA SWAMIGAL *v*. MANALI SARAVANA MUDALIAR.
51 I.C. 876.

——— S. 35—*Registration — Administration of execution by some of the executants.*

Where a document contemplates that four persons should execute it, but only two of them executed it and present it for registration, the document if registered is binding as between them. (*Ayling and Seshagiri Iyer*, JJ.) NATESA IYER *v*. SUBRAMANIA IYER.
23 M.L.T. 307=45 I.C. 535=
(1918) M.W.N. 703.

——— S. 35—*Registers of Deaths and Births—Entries in village Registers—Admissibility.*

When birth and death registers are kept by a Village Official under the directions of the Board of Revenue as agents of Government an entry therein is admissible in evidence under the section. It is not necessary that the public servant should be compellable by legislative enactment to discharge such a duty. 7 W.R. 726, Foll. Entry in such a register is proof of the actual date of death. (*Coutts-Trotter and Seshagiri Iyer*, JJ.) DEVARAPALLI RAMALINGA REDDI *v*. SRIGIRIRAJU KOTAYYA.
41 Mad. 26=22 M L.J. 17=33 M L J 60=
(1917) M.W.N. 553=41 I C. 286=
6 L W. 246.

——— S. 35—*Letter in register of official correspondence—Copy of.*

Under S. 35 copies of letters made in registers of official correspondence kept for reference and record are admissible. (*Wallis*, C J. *and Burn*, J.) KRISHNA THEVAR *v*. RAMASAMI PANDIA. 40 Mad. 871=
(1917) M.W.N. 201=39 I.C. 263=
33 M.L.J, 277.

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———S 35—*Parwana or grant, transaction of.*

As Ss. 65 and 91 make it clear that when a written grant is lost secondary evidence can be given of it only as defined by law, a translation of parwana or grant forming the enclosure to the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 63, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL.
35 I.C. 201=4 L.W. 331.

———S. 35—*Medical certificate—Proof of age.*

An age certificate given by a medical man to a private patient is not public record under S. 35. (*Coutts-Trotter and Srinivasa Iyengar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBBARAYA GOUNDAN. **33 I.C. 142.**

———S. 35—*Survey Records, admissibility of.*

Entries of the extents of survey fields made in survey registers are admissible under S. 35 to prove an encroachment though insufficient to prove title to the extent encroached upon. 10 I.C. 652; 33 M. 173; 33 M. 362, Dist. (*Ayling and Tyabji*, JJ.) KALAYI NARAYANA JOGITHAYA *v.* SECRETARY OF STATE.
29 I.C. 154=2 L.W. 413.

——— S 35—*Collector's certificate—Value of.*

A certificate issued by the Collector in respect of immoveable property in Madras is only evidence of revenue registry and does not afford any title or security as to ownership. (*White and Oldfield*, JJ.) KUPPAMMAL *v.* GATTIPALLI GOPAUL CHETTY.
27 I.C. 14=1 L.W. 649.

———S. 35—*Report by Tahsildar to Collector—Public Record—Admissibility.*

A report by a Tahsildar to the Collector to the effect that a village Munsif reports that certain charities had not commenced, is inadmissible to prove the fact that the charities had not commenced on a particular date because though a single document may be a public Record under S. 35 of the Act, every statement made by a public servant is not admissible to prove the fact to which it relates. 11 M.L.J. 315; 21 B. 695; 31 A 457; 1 I.A. 209 Dist. 7 M.L.J. 117, Relied upon. (*White*, C.J.) MALLIKARJUNA DUGGET *v* SECRETARY OF STATE. **14 I.C. 401=35 Mad. 21.**

———S 35—*Report of process-server.*

Report of a process-server is admissible in evidence to prove the facts reported by him. (*Sundara Iyer and Phillips*, JJ.) ABDUL KHADAR *v.* AJIGAR AHAMAD.
35 Mad. 670=22 M.L.J. 25=10 M.L.T. 413=12 I.C. 679=(1911) 2 M.W.N. 434.

———S 35—*Administration report.*

An entry of a ward's age in an administration report of Court of Wards is evidence under

EVIDENCE ACT (I of 1872), S. 35.

S. 35 of the Evidence Act. (*Wallis and Krishnaswami Aiyar*, JJ.) ARI CHETTIAR *v.* RAMA REDDIAR. **9 I.C. 567=9 M.L.T. 214.**

———S. 35—*Record of admission made before a court is relevant.*

The statement of a Court that a person admitted the claim of another person in a case pending before it is relevant under S. 35 of the Evidence Act as the statement forms part of the record. (*Ashworth and Simpson*, A.J.C.) THAKUR RUDRA PRATAP NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH.
1923 Oudh 61.

———Ss. 35 and 14—*Confession—Record of, by Magistrate—Voluntary nature of confession.*

Though a magistrate has recorded a certificate at the foot of a confession, it is not conclusive and facts which may lead the court to think that the confession was not voluntary can be proved. (*Kanhaiya Lal and Daniels*, A.J.Cs.) NAR SINGH *v.* EMPEROR
25 O.C. 229=1923 Oudh 302.

———S. 35—Khewat, *entry in*—Prima facie *evidence of title—Rebuttal.*

An entry in the *Khewat* is *prima facie* evidence of title but it might be rebutted by showing that there is no likelihood of there being any and that the mutation obtained was retained. (*Simpson*, A. J. C.) GHULAM MUHAMMAD *v.* SABIT ALI. **1922 Oudh 140.**

———S. 35—*Register of deaths and births—Chaukidar's register—Entries in.*

An entry made in a chaukidar's register of births and deaths is not admissible in evidence if it neither purports nor is proved to be signed by the station writer, the register not being one directed to be kept by any law. (*Ashworth*, A.J.C.) MUHAMMAD JAFAR *v.* EMPEROR.
22 O.C. 250=34 I.C. 166=21 Cr. L.J. 22=6 O.L.J. 677.

———S 35—*Endorsement by public servant—Presumption.*

An endorsement on an official record signed by a public servant in the performance of his duties should, in the absence of any evidence to throw doubts upon it, be presumed to be correct. (*Daniels and Lyle*, A.J.Cs.) KESARI KUMAR *v.* RAM RANI. **33 I.C. 723=6 O.L.J. 431.**

———S. 35—*District Gazetteer, if evidence.*

A passage in District Gazetteer describing the lineage of one of the leading families of the district cannot supply the want of a pedigree showing the family and the members of it. (*Lyle and Ashworth*, A.J.Cs.) BALMUKUND *v.* BISHWA NATH SINGH. **52 I.C. 851=6 O.L.J. 337.**

——— S. 35—*Register of deaths — Police Regulations.*

The register of deaths maintained under Para 367 of the Police regulations is an official regieter and entries are made in it by a public servant in the discharge of his official duty and

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are admissible under S. 35. (*Daniels*, A.J.C.) ZAIBUNNISSA *v.* HASARATUNNISSA.
1 U.P.L.R. (J.C.) 1=52 I.C. 162=22 O.C. 124.

——S. 35—*Revenue papers—Entries in—Value of.*

Where a person is entered in the revenue papers as an under-proprietor but it appears from other evidence that he does not hold such a status, the entry in the revenue papers is of no avail to him for the purpose of establishing his title as an under-proprietor. (*Lindsay*, J.C.) RAM RUP SINGH *v.* DEBI PERSHAD SINGH.
47 I.C. 751=5 O.L.J. 513.

——S. 35—*Revenue papers—Entries in—Value of.*

Old entries in revenue papers as to the plots held by ordinary tenants and as to the rate of rent payable by them are not by themselves evidence as to the fixing of rent by a competent authority or by action of parties nor do they raise a presumption to that effect. (*Stuart*, J.C.) SARAB JIT SINGH *v.* RAMPUR MATHRA ESTATE. **37 I.C. 27=3 O.L.J. 468.**

——S. 35—*Chaukidar's birth and death register.*

A Chaukidar's register of births and deaths is not a public document. No importance can be attached to it in view of S. 35. (*Kanhaiya Lal and Kendall*, A.J.Cs.) BISHESHAR DAYAL *v.* HIRA LAL. **19 O.C. 221=36 I.C. 941=4 O.L.J. 49.**

——S. 35—*Revenue register—Entries in—Value of.*

An entry made in a revenue register without any explanation as to how it originated or was brought into existence is, if it is inconsistent with other established facts, not entitled to any weight. A partition officer of the Revenue Court cannot convert private property into *wakf*, by giving it a particular designation. His proceedings are not conclusive as between a party to the partition and strangers. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) PARAMESHRI DAS *v.* GIRDARI LAL. **30 I.C. 249=2 O.L.J. 259.**

——Ss. 35 and 112—*Entry in Khewat—If relevant to prove legitimacy—Defts. not parties to it.*

An entry in a Khewat founded on a mutation proceeding showing the plffs. to be the reputed sons of a certain person is relevant in proving their legitimacy though the defts. were not parties to such proceeding. (*Lindsay*, J.C.) APARBAL SINGH *v.* NARPAT SINGH.
23 I.C. 972=1 O.L.J. 89.

——S. 35—*Register of deaths.*

An entry of deaths and births in a register which was not kept up by a Public authority or by a public servant is not admissible under S. 35. (*Chamier*, J.C.) SAMPAT *v.* GOWRI SHANKAR. **10 I.C. 713=14 O.C. 68.**

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——S. 35—*Survey map—Boundaries shown therein after compromise of parties—Conclusive.*

Where the parties consent to be bound to regard the boundary line as laid by the survey authorities as conclusive, they cannot afterwards question the correctness of the same. (*Das and Adami*, JJ.) BABU RAGHUNATH *v.* MAHARAJA SIR RAMASHWAR. **1922 P. 87.**

——Ss. 35, 13—Batwara Khasra *is not a record.*

A *batwara khasra* is not a record within the meaning of S. 35 and an entry made there in the name of a tenant in possession is not admissible in evidence under S. 35 of the Evidence Act, but under S. 13 it can be put in to show the history of the plot in question before the creation of the tenancy. (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. **63 I.C. 676.**

——S. 35—Hissawari *is not admissible.*

A *hissawari* prepared in consequence of a demand by the Collector under S. 30, Bengal Land Registration Act, is not admissible under S. 35 of the Evidence Act as it is not a public or other official book, register or record. (*Chomier*, C.J. *and Sharfuddin*, J.) TANHA SINGH *v.* BANDHU SINGH. **59 I.C. 8=(1919) Pat. 323.**

——S. 35—*Entry in Government register—Value of.*

An entry in a Government register that a certain person is paying revenue under a settlement does not necessarily imply that he has an independent title by virtue of the settlement where he got that property as the heir of a certain person. (*Coutts and Sultan Ahmad*, JJ.) MAHARAJAH KESHO PRASAD SINGH *v.* BABU SHIVA SARAN DAYAL. **1 P.L.T. 602.**

——Ss. 35 and 165—*Confidential enquiry—Ex parte proceedings.*

A suit was dismissed by the Judge relying upon a confidential inquiry by an assistant settlement officer at the time of Revised Settlement for ascertaining to whom the holding belonged. *Held*, that the judgment could not be maintained as the proceeding of the confidential inquiry contained an opinion on an *ex parte* investigation inadmissible in evidence under S. 35 and that the Judge must record a finding on the evidence adduced before him. In deciding a suit for possession of a holding the Court must record a finding on the evidence adduced before it but cannot base its judgment on matters not properly admissible in evidence. (*Das*, J.) BALDEO SINGH *v.* SHEORAJ KUERI.
56 I.C. 807=2 U.P.L.R. P.) 135.

——S. 35—*Report by Court peon in execution proceedings.*

The peon's return in execution proceedings being an official record made by a public servant in the discharge of his official duty, is admissible in evidence. (*Miller*, C.J. *and Jwala Prasad*, J.) HERAMBA NATH BANDOPADHYA *v.* SURENDRA NATH MITRA. **53 I.C. 20=(1919) Pat. 465.**

S. N. DAR, B. A. LL. B.
Vakil High Court.
SRINAGAR (Kashmir)

EVIDENCE ACT (I of 1872), S. 35.

———S. 35—"Faid Rewaj Bhaoli"—*Admissibility in evidence.*

Whether or not the "*Faid Rewaj Bhaoli*" is a part of the Record-of-Rights to which a presumption of correctness is attached under S. 103 (b) of the Bengal Tenancy Act, it is admissible under S. 35 of the Evidence Act being a public record prepared by the revenue officers as part of the record-of-rights. (*Chamier and Sharfuddin*, JJ.) SHEO PRASAD SINGH *v.* LAL BABU. **39 I.C. 503 = 1 P.L.W. 617.**

———S. 35—*Entry by settlement officer as to custom—Admissibility.*

In making an entry of village customs in the village note the settlement officer is acting as a public servant in the discharge of his official duty and as such the entry is admissible in evidence. (*Chapman and Roe*, JJ.) MANI RAM SINGH *v.* AKHO AHIR. **1 P L W. 244 = 39 I.C. 222 = (1918) Pat. 36.**

——S. 35—*Butwara papers—Admissibility.*

Butwara papers can be admitted in evidence against parties to the Butwara proceedings in order to rebut the presumption raised by record-of-rights. 17 C.W.N. 779, Dist. (*Jwala Prasad*, J.) SRI ANS DAS *v.* JUGAT PAT LAL **38 I C. 205.**

——S. 35—*Settlement records* — Jarad Rewaj Bhaoli.

A Jarad Rewaj Bhaoli prepared by a Settlement Officer in discharge of his official duty is admissible under the section. (*Chamier*, C.J. *and Sharfuddin*, J.) TULSI MAHTON *v.* JHANDOO PONDEY. **1 P.L.W 238 = 38 I C. 176 = 2 P.L J. 187.**

———S. 35 — *Butwara papers* — *Third parties.*

In the butwara proceedings, the evidence of the Butwara papers is altogether inadmissible against those that are no parties to the proceedings. (*Jwala Prasad*, J.) RUDRA NARAIN SINGH *v.* RAMESHWAR. **37 I C. 829.**

——S. 35—*Butwara papers.*

In a suit for enhancement of rent Butwara papers are not evidence against the tenants. (*Chamier*, C.J. *and Sharfuddin*, J.) SAJIWAN MAHTO *v.* GULAB CHAND LAL. **35 I C 678 = 1 P L J 409.**

———S. 35—*Revenue registers — Extracts from—Admissibility.*

For the purpose of proving the existence of a mortgage extracts from Revenue registers Nos. 1 and 5 and a map showing the party in possession as mortgagees and the claimant as mortgagor, though relevant but are not sufficient by themselves. (*May Oung and Duckworth*, JJ.) KO PO MAUNG *v.* MA MEIN GALE. **1 R. 562 = 1924 R. 135**

———S 35—*Revenue Register* No. VII, *entry in—Relevancy of presumption.*

Under S. 35 of the Evidence Act the entry in Revenue Register No. VII is a relevant fact.

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Although such entry in the register recording the alienation does not prove the alienation or the ownership of alienor at the time it was made, yet it does create a presumption that a report on the alienation in the terms recorded was made by the parties to the alienation. (*Pratt*, J.) MAUNG HLAING *v.* MAUNG CHIT SU. **1 R. 135 = 1923 Rang. 196.**

——S. 35—*Assessment rolls—Entries in—Relevancy of.*

Entries in assessment rolls are relevant evidence. (*Duckworth and Pratt*, JJ.) MG. PO LUN *v.* MA E MAI. **1923 Rang. 57.**

———Ss. 35 and 65—*Entry in—Register of previous conviction—Admissibility of.*

An entry in a register of previous convictions, where the conviction is relevant, is admissible under S. 35 and can be proved by a certified copy under S. 65 of the Act and upon it the accused might be asked if he admitted the conviction. (*Parlett*, J.) MAUNG THA ZAN *v.* EMPEROR. **42 I.C. 923 = 19 Cr. L.J. 11.**

——S. 35—*Revenue Records — Admissibility of.*

The facts which it is the duty of the Revenue-officer to record, are admissible in evidence under S. 35 of the Act. (*Pratt*, J.C. *and Boyd*, A.J.C.) BIBI SAHIB JADI *v.* MIR MUHAMMAD. **32 I.C. 548 = 9 S L.R. 143.**

———S. 36—*Commissioner's Report—Documents referred to in a statement — Documents not produced—Admissibility of the statement.*

Where a certain map was referred to in the report of the Commissioner but the map was not produced, their Lordships of the Privy Council received the report of the Commissioner as admissible inasmuch as no objection was taken to the report and the Commissioner himself was neither examined nor cross-examined. (*Lord Phillimore*). KUMAR NARESH NARAYAN ROY *v.* SECRETARY OF STATE FOR INDIA. **45 M.L J. 444 = 50 Cal. 446 = (1923) M W.N. 511 = 50 I A. 121 = 39 M L T. (P.C.) 162 = L.R. 4 (P.C.) 50 = 23 C W N. 453 = 1923 P.C. 1.**

———S. 36—Thak *map—Entries in, value of.*

A decree which was awarded to the plff. Zamindar in an action in ejectment and which rested on an entry in the remarks column to the *thakbast* map made during the survey proceedings on an *ex parte* statement of the Zamindar's agent which was immediately contradicted by the deft., could not be sustained. (*Mr. Ameer Ali.*) JAGADINDRA NATH *v.* HEMANTA KUMARI DEBI. **15 C W N. 887 = (1911) 2 M.W.N. 101 = 10 M L.T. 157 = 13 Bom. L.R. 806 = 14 C L.J. 319 = 11 I.C. 542 = 8 A.L J. 1176 (P.C.).**

———Ss. 36 and 83—*Maps and plans prepared under authority of Government—Admissibility—Standing by, when amounts to*

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abandonment of one's rights—Government and private owner, difference between.

Maps and plans and statement prepared under the authority of Govt. for a public purpose must be presumed to be accurate under S. 83 and that the statements contained in them are relevant facts under Ss. 35 and 36 of the said Act. When such documents prepared in 1871 show that a certain piece of land belonged to Govt., the onus is on the person who sets up acquisition of title to it to prove it. (*Griffin and Chamier*, JJ.) RAMACHANDAR *v.* ALI MUHAMMAD. **35 All. 197=18 I.C. 797=11 A L.J. 283.**

——— S. 36 —*Thak or survey maps—Value in evidence.*

The maps are not evidence, strong enough to shift the burden of proof, nor do they raise a strong presumption that the state of things as shown in the maps did actually exist at the time of settlement. The question is one of fact and must be determined on the facts and circumstances of each case. (*Mookerjee and Walmsley*, JJ.) PRAFULLA NATH TAGORE *v.* SECY. OF STATE FOR INDIA. **24 C.W.N. 639=57 I.C. 29=31 C L J. 320**

———S. 36—Butwara *map at partition proceedings—Admissibility against tenants.*

A *Butwara* map prepared in a partition proceedings between the proprietors of an estate is not admissible against tenants of the estate, if it was prepared after their tenancy was created. But where a commissioner is appointed to make an enquiry with reference to the map and no objection is taken to its admissibility, it is admissible. (*Beachcroft*, J.) BANAMALI PAL *v.* SATISH CHANDRA DUTT. **56 I.C. 138.**

———S. 36—Thak *maps—Survey maps—Admissibility and respective value.*

The rights of property as between two parties cannot be affected by a map drawn for a different purpose not relevant to the subject of the dispute between them. Although the survey officers have at their disposal means of more accurate measurement than the Thak officers, yet no hard and fast rule can be laid down that a survey map is more reliable than a *Thak* map. The true principle is that the map which more clearly agrees with the local land-marks is the one that should be followed. (*Mookerjee and Walmsley*, JJ.) AMRITA SUNDARI *v.* SHERAJUDDIN AHMED. **23 I.C. 136=19 C W.N. 868.**

——S. 36—Thak *and Survey maps—Entries in—Presumption—Rebuttal.*

The presumption of genuineness of *Thak* and Survey maps furnishing valuable evidence of possession and title at the time they were made, is rebuttable. (*Mookerjee and Beachcroft*, JJ.) MOHENDRANATH BISWAS *v.* SHAMSUNNISSA KHATUN. **21 C.L.J. 157=27 I.C. 954=19 C.W.N. 1280.**

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——S. 36—Thakbust *map—Valve of Thak map.*

In a suit for possession between a proprietor based on a *Thakbust* Map, the Thak Map is unquestionably a correct record of the boundary of a village and estates and where it is relaid with substantial accuracy, it proves plff.'s title. (*Carnduff and Chapman*, JJ.) ASHRAF ALI *v.* MUHAMMAD ALI. **24 I.C. 618.**

———Ss. 36 and 35—Kanungo's *map—Value of.*

In an enquiry before the Collector, where the question arose whether the property was of the owners of certain *Mouzah* or whether it was land which formed part of no settled estate and to which the Govt. was entitled, a map prepared by a *Kanungo* was used. *Held*, that the map did not fall within S. 35 or S 36 of the Evidence Act and was inadmissible. (*Woodroffe and Coxe*, JJ.) TARINI CHARAN SARKAR *v.* FAKARANNISSA CHOWDHURANI. **15 I C 459.**

——S. 36—Thak *and Survey maps—Evidentiary value of—State of things at Permanent Settlement.*

An entry in a *Thakbust* map is sufficient evidence to entitle a Court to hold that the disputed lands were really included in the estate at the time of the Permanent Settlement. 15 C.W.N. 706, Foll. 5 C. 212, Expl. 7 C.W.N. 849; 16 C. 18, Rel. (*Carnduff and Chapman*, JJ.) FAZLAR RAHIM *v.* NABENDRA KISHORE ROY. **15 I.C. 341=17 C W.N. 151.**

——S. 36—Thak *and Survey maps—Presumption—Existence of state at time of.*

It cannot be presumed as a matter of fact that the state of things described in the *thak* and survey maps existed at the time of Permanent Settlement. (*Mookerjee and Carnduff*, JJ.) SECRETARY OF STATE FOR INDIA *v.* KALIKA PRASAD MOOKERJEE. **14 I.C. 609=15 C.L J. 281.**

———S. 36—Thakbust *map—Presumption of correctness.*

Entries in a *thakbust* map are not sufficient for enabling the Court of fact to hold that lands under dispute were really included in an estate at the time of the Permanent Settlement. They may be good evidence as to what the boundary of a particular plot was at the time of the Permanent Settlement. No general rule can be laid down as to the weight to be assigned to a survey map as a piece of evidence. It is the good evidence of possession according to the boundary demarcated thereon and may be taken to have been admitted by those concerned and in each case it must be decided upon the circumstances if it raises a reasonable presumption of title. Revenue survey maps are not decisive and may be shown to be wrong. (*Jwala Prasad and Ross*, JJ.) RAMNANDAN SAHAY *v.* JAIGOVIND PANDEY. **2 P. 839=1924 P. 213.**

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———S. 36—Kistwari *maps—Evidentiary value of.*

Kistwari maps (survey maps) are under S. 36 of the Evidence Act, evidence between the parties *quantum valet*. They are primarily evidence of possession, but evidence of possession is always evidence of title. (*Doss and Bucknill*, JJ.) CHAUDHURY NAZIRUL HAQ *v.* ABDUL WAHAB KHAN. **3 P.L.T. 140=1922 P. 58.**

———S. 36—*Survey map — Evidentiary value of.*

Maps and surveys in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible as valuable evidence of the state of things at the time they were made. Such a map, unless shown to be wrong, may be received in evidence as correct when made. (*Das and Adami*, JJ.) BIBI WAKILAN *v.* DEO NANDAN. **6 P.L.J. 681=59 I.C. 298=2 P.L.T. 81.**

———S. 37—'*Matter of public history*'.

The question of title between the trustee of a mosque and a private person, cannot be deemed to be a matter of public history within S. 37, Indian Evidence Act. (*Shadi Lal and Wilberforce*, JJ.) FARZAND ALI *v.* ZAFAR ALI. **46 I.C. 119=132 P.W.R. 1918.**

———S. 38—*Ceylon Insolvency Ordinances can be looked into.*

S. 38 of the Evidence Act allows the reference to the Ceylon Insolvency Ordinances for the purpose of deciding questions of the deft.'s liability under the Ceylon Law. (*Miller and Sadasiva Iyer*, JJ.) DEIVANAYAGAM PILLAI *v.* MUTHUKUMARASWAMI PILLAI. **14 I.C. 560.**

———S. 40—*Judgment—Recitals.*

Where a judgment is admitted in evidence to prove that there was litigation which terminated in a certain way, all the recitals in the judgment are not part of the evidence. (*Mookerjee and Rankin*, JJ.) ABDUL LATIF KAZI *v.* ABDUL HUQ KAZI. **28 C.W.N. 62=1924 Cal. 523.**

———Ss. 40, 41 and 42—*Lunacy proceedings.*

When the question is whether proceedings in lunacy held under the Lunacy Act are admissible in evidence in a subsequent suit to show the lunacy of the deft. at a particular time. *Held*, that the orders and reports made under the Act by the Judge before whom the lunacy proceedings were held were admissible. (*Greaves*, J.) SRIMATHI PADMABATI DASSI *v.* BONOMALI SEAL. **56 I.C. 566=24 C.W.N. 378.**

———S. 40—*Findings of Criminal Court.*

Findings of a Criminal Court though irrelevant in a Civil Court yet the Criminal Proceedings

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may be referred, to test the evidence adduced in the Civil suit. (*Kensington and Chevis*, JJ.) HARIA *v.* BASANTH KAUR **8 P.L.R. 1912 Sup.)=16 I.C. 491=128 P.W.R. 1912=117 P.R. 1912.**

———S. 41—*Probate Court—Decision of—Binding nature.*

The decision of a Probate Court as to the genuineness of a will and position of the widow as executor is binding in proceedings in Courts exercising other than testamentary jurisdiction. (*Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN PRASHAD SINGH. **43 Cal. 694=43 I.A. 91=14 A.L.J. 466=20 C.W.N. 738=18 Bom. L.R. 397=C.L.J. 621=(1916) 1 M.W.N. 419=20 M.L.T. 1=3 L.W. 544=33 I.C. 914=31 M.L.J. 77 (P.C.)**

[On appeal from 6 I.C. 301=11 C.L.J. 623.]

———S. 41—*Decision in Insolvency Court—Conclusive proof of title.*

A decision of Insolvency Court is conclusive proof of title against all the world. (*Piggott and Walsh*, JJ.) SITARAM *v.* JHUJHAR SINGH. **33 I.C. 798=15 A.L.J. 661.**

———S. 41—*Will—Probate Court's decision on certain issues—Whether Dt. Court could re-try in a subsequent suit.*

The decision of a probate Court in regard to a will and on the contentions, is conclusive and it is not open to a Dt. Court in a subsequent suit to re-try those issues. (*Scott*, C.J. *and Heaton*, J.) BRENDON *v.* SHRIMATI SUNDERABAI. **38 Bom. 272=23 I.C. 221=16 Bom. L.R. 164.**

———S. 41—*Probate judgment — Binding on all persons.*

A judgment of a Probate Court is a judgment *in rem* and is not subject to collateral attack. While it remains in force it is conclusive not only on the person who are parties to the judgment but upon all persons and all Courts. (*Mookerjee and Panton*, JJ.) RANI HEMANGINI DEBI *v.* SARAT SUNDARI DEBYA. **66 I.C. 882=34 C.L.J. 457.**

———S. 41—*Grant of letters—Hindu widow—Revocation—Civil Court.*

Where a Hindu widow has been granted letters of administration and she alienates her husband's property, the remedy of the reversioner is to apply to the Probate Court for revocation. A Civil Court has no jurisdiction to declare the grant of letters null and void in a suit by the reversioner to declare the alienation invalid. (*Chaudhuri and Cuming*, JJ.) ANNADA CHARAN *v.* ATUL CHANDRA MALIK. **23 C.W.N. 1043=54 I.C. 197=31 C.L.J. 3.**

———S. 41—*Judgment* in rem *is conclusive against all persons and all Courts,*

A judgment *in rem* like the decision of Probate Court is not subject to collateral attack. It is conclusive on the parties to the

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proceedings as well as to all Courts. (*Mookerji and Panton*, JJ.) HEMANGINI DEBI *v.* SARAT SUNDARI. **50 I C. 882=31 C.L.J. 457.**

———**S. 41**—*Exhaustive narure of section.*

The section is exhaustive as to judgments *in rem*. (*Reid*, C J. *and Johnstone*, J.) RAHMAT ALI KHAN *v.* BABU JUHRA. **14 P R. 1912= 117 P.L R. 1912=14 I.C. 486= 96 P.W.R. 1912.**

———**S. 41**—*Last clause — Insolvency — Estoppel against creditor—It arises.*

Estoppel against an opposing creditor arises even if an Insolvency Court fails to make any declaration under the last para of S. 41, of the Evidence Act. (*Reid*, C.J. *and Rattigan*, J.) RAMNARAIN *v* DURGADAT. **55 P.R. 1912= 13 I.C 568=242 P W R. 1912.**

———**S. 41**—*Decision as to the minority.*

A judgment holding a person to be a minor is inadmissible under S. 13 (*b*). (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) VENKATA RANGAPPA NAICKAN *v.* SUBBARAYA GOUNDAN. **33 I C. 142.**

———**S. 41**—*Judgment of Insolvency Court if bars subsequent suit.*

When the Insolvency Court finds that the transfers by the debtor are not fraudulent, the decision bars the suit of the creditor for declaration that the transfers are fraudulent and void. (*Hallifax*, A.J.C.) NARAYAN *v.* HARDATTA RAI. **57 I.C. 612.**

———**S. 41**—*Decision of Probate Court.*

A judgment of a Probate Court is conclusive proof that the person to whom Letters of Administration or Probate have been granted, has been invested with the powers and the responsibilities of the deceased and nothing more. But a question of status decided in those proceedings can be contested again in a regular suit. (*McColl*, J.C.) MI NGWE ZAN *v.* MI SHWE TAIK. **10 I.C. 987=(1910) 1 U B.R. 61.**

———**Ss 42 and 43**—*Question of liability—Decision of a Civil Court.*

Where a person is charged with criminal breach of trust as regards certain items and the question of Civil liability about the same items has been determined by a competent Civil Court, the judgment of that Court would be the best evidence of the civil rights of the parties and hence a relevant fact. (*Heaton and Shah*, JJ.) *In re* MARKUR.

41 Bom. 1=17 Cr. L J. 153= 33 I.C 683=18 Bom. L.R. 185

———**Ss. 42 and 41**—*Remarks without a finding not admissible.*

Remarks made incidentally about another plot which was not then in suit are not admissible in a later suit. (*Campbell*, J.) BANWARI LAL *v.* SHEO CHAND. **1923 Lah. 384.**

———**S. 43**—*Judgment not* inter partes—*Admissibility.*

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A mortgagee in possession of a share in a village leased the property. The original mortgagor executed simple mortgage to the lessee with the covenant that the first mortgage was to be paid off which was accordingly done. Nevertheless the lessee's name continued to be recorded as lessee; on the strength of which entry, he brought a suit for profits against the *Lambardar*. The *Lambardar* brought a suit to declare that the lessee was not entitled to profits, the mortgage having been redeemed. The lessee contended that by an arrangement between him and the mortgagor he was left in possession of the property as lessee for the period of the original lease and that he had been made to account to the mortgagor in a suit between them on the simple mortgage for the very year for which he had obtained a decree for profits against the *Lambardar* and produced the judgment between himself and the mortgagor to prove the allegation. *Held*, the judgment was admissible (*Chamier and Piggott*, JJ.) MUHAMMAD AHMAD SAID KHAN *v.* MASTI-UL LAH KHAN. **28 I.C. 387=13 A L.J. 317.**

———**S. 43**—*Judgments otherwise relevant.*

Judgments not *inter partes* are admissible in evidence for the purpose of showing that the title of a deft. was set up by third party and that the suit was decreed. (*Chatterjea and Panton*, JJ.) MOHAR ALI SARKAR *v.* MAFIZUDIN SARKAR. **65 I.C. 699.**

———**S 43**—*Statement of a right as to title in a will—Recital in judgment not* inter partes *not evidence.*

In a suit for possession of lands as *brahmotter*, recital of the title in a will of plff.'s father and a recital in a judgment not *inter partes* cannot be admitted. (*Chatterjee and Newbould*, JJ.) SATINDRA KUMAR *v.* KRISHNA KUMARI. **36 I.C. 882.**

———**S. 43**—*Judgment not* inter partes—*Recitals in.*

A judgment not *inter partes* may be used in evidence in certain circumstances as a fact in issue, or as a relevant fact, or possibly as a transaction, but the recitals in the judgment cannot be used as evidence in the litigation between the parties. The law attributing unerring verity to the substantive as opposed to the judicial portions of the record, every judgment is conclusive evidence, for or against all persons, whether parties, privies or strangers, of its own existence, date and legal effect, as distinguished from the accuracy or truth of the decision rendered. (*Mookerjee and Roe*, JJ.) BASI NATH PAL *v.* JAGAT KISHORE ACHARJEE. **20 C.W.N. 643=35 I.C. 298= 23 C.L J. 533.**

———**S. 43**—*Order of Criminal Court under S. 145, Cr. P.C.—When admissible.*

The finding in an order of a Criminal Court under S. 145 is not admissible though the order itself is admissible to show the parties in dispute, the land in dispute, and the parties

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entitled to possession.) *Jenkins*, C.J., *Mookerjee and Richardson*, JJ.) MOHUNT KRISHEN DAYAL GIR *v.* IRSHAD ALI KHAN.
31 I.C. 963 = 22 C.L.J. 553.

———S. 43—*Decision of Criminal Court—If admissible in Civil Court.*

The finding of a Criminal Court on the question of possession is admissible in evidence in a Civil proceedings taken for recovery of possession of the same land, to show what order had been made, who the parties to the dispute were, what the land in dispute was and who was held entitled to possession. (*Mookerjee and Beachcroft*, JJ.) KRISHNA NATH CHKKRAVARTHI *v.* MAHOMED WAFIZ.
21 C.W.N. 93 = 31 I.C. 789 = 23 C.L.J 563.

———S. 43—*Judgment — Admissibility to prove admission*

A judgment in a previous suit not *inter partes* is not admissible as evidence of an admission said to have been made by one of the parties in the course of that suit. The judgment is no better than any other hearsay evidence of the admission. The proper mode of proving an admission made by a party in a previous suit is by producing a certified copy of the party's written statement, or if the admission was made orally by producing a copy of his deposition or by putting in the witness-box-some one who actually heard what was said by him. (*Richardson and Mullick*, JJ.) DEBENDRA NATA HALDAR *v.* BISESHWAR HALDAR.
20 C.W.N. 648 = 30 I.C. 821 = 22 C.L.J. 270.

———S. 43—*Previous judgment contesting the right of granthi—Findings regarding the nature of the property.*

Where in a suit contesting the right of the *granthi* of the darbar Sahib (golden temple at Amritsar), to alienate certain shop, it was held that the properties were *waqf* and attached to the *granthi* and could not be alienated by the *granthi*, the judgment only proves that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf* and was attached to the *granthi* is not relevant in a subsequent suit by the successor to the office challenging the alienation by his predecessor-in-title. (*Scott-Smith and A. Raoof*, JJ.) INDAR SINGH *v* FATEH SINGH.
59 I.C. 744 = 1 Lah. 340

———Ss. 43 and 11—*Finding as to adoption in a suit—Admissibility in another suit.*

Findings of fact in one case about *factum* or validity of adoption are not evidence in another suit against persons who were not parties to the case in which the findings were given. (*Johnstone*, J.) ARJAN SINGH *v.* DARBARA SINGH. **193 P.L.R. 1916 = 32 I.C. 312 = 140 P.W.R. 1916.**

———S. 43—*Depositions in criminal case.*

Neither judgments nor depositions in criminal cases are admissible in Civil proceedings,

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(*Rattigan and Jones*, JJ.) BISHENDAS *v.* RAM LABHAYA. **106 P.R. 1916 = 32 I.C. 18. 187 P.W.R. 1915.**

———S. 43—*Judgment in a criminal case—Value.*

A judgment in a criminal trial is by itself evidence only of the conviction and not of any other matter. (*Stuart*, J.C.) MUHAMDI BEGAM *v.* DURGA PRASAD. **40 I.C. 432 = 4 O.L.J. 299.**

———S. 43—*Judgment not* inter partes *not relevant.*

Where a Civil Court has decided about the truth and validity of an adoption, the judgment of the Civil Court is not admissible in a subsequent suit between third parties in proof of the adoption. The judgment is neither a judgment *in rem* nor does it constitute *res judicata*. (*Miller*, C.J. *and Mullick*, J.) GURU MAHADEO ASRAM PRASAD SAHI *v.* JAGATRAJ KUER.
71 I.C. 929.

———S. 44—*Competent Court — Want of jurisdiction.*

To avoid a prior judgment on the ground of fraud or want of jurisdiction, the fraud must have been "practised on the Courts" and a total want of jurisdiction is required. Mere irregularity in the exercise of jurisdiction is not enough. (*Lord Shaw*) RAJWANT PRASAD PANDE *v.* RAM RATAN GIR. **37 All. 485 = 42 I.A. 171 = 13 A.L.J. 937 = 29 M.L.J. 165 = 2 L.W. 671 = 18 M.L.T. 173 = 17 Bom. L.R. 754 = 20 C.W.N. 33 = (1915) M.W.N. 736 = 30 I.C. 849 = 23 C.L.J. 56 (P.C.).**

———S. 44—*Probate—Party applying for revocation—Barred in subsequent suit.*

Where a party's application for revocation of probate on the ground of fraud or collusion has been dismissed by the Dt. Court, the party will be barred by the decision in a subsequent suit of the executor to recover the estate. (*Scott*, C.J. *and Batchelor*, J.) KISHOREBHAI REVADAS *v.* RANCHODIA. **38 Bom. 427 = 25 I.C. 31 = 16 Bom. L.R. 459.**

———S. 44—*Fraudulent decree can be proved to be such.*

Under S. 44 when a decree which has been obtained by fraud is sought to be used against a person, he is entitled to show the true nature of the decree, notwithstanding the fact that he has not previously taken steps for cancellation of the decree. But he cannot be permitted to challenge the decree unless he sets out specifically the circumstances which constituted the alleged fraud on him and on the Court. (*Mookerjee and Chotzner*, JJ.) PULIN BEHARI DEY *v.* SATYA CHARAN.
38 C.L.J. 367 = 1923 Cal. 79.

———S. 44—*Grant of letters—Fraud or collusion alleged—Procedure.*

It cannot be said that the Court, other than the Court granting administration.

cannot, in cases of fraud or collusion, deal with the question of fraud or collusion. The better course however is to stay the suit and to allow the party alleging fraud or collusion to apply to the proper Court for revocation of the grant of letters. (*Walmsley and Greaves*, JJ.) RAKSHAB MANDAL *v.* TARANGINI DEVI. **62 I.C 448=25 C.W.N. 207.**

——— **S. 44**—*Previous decree—Fraud.*

In a suit to set aside an *ex parte* decree on the ground of fraud plff. is entitled to show that a certain High Court decree to which he was no party was obtained by fraud or collusion under S. 44 of the Evidence Act, without suing to set aside that decree. (*Chatterjea and Newbould*, JJ.) ASWINI KUMAR SAMADDAR *v.* BENAMALI CHAKRAVARTI. **40 I C 607= 21 C.W.N. 594**

——— **S. 44**—*Consent decree.*

The plff. being no party to the consent decree can attack it in his suit and need not have it set aside. (*Holmwood and Imam*, JJ.) ABDUL HAKUM GAZI *v.* PANCHI DASI. **32 I.C. 849.**

——— **S. 44**—*Decree obtained by fraud—Rights of party to plead in defence.*

A party can rely on fraud, even though he has not brought a suit to set aside the decree alleged to have been obtained by fraud. (*Jenkins*, C.J. *and N R. Chatterjea*, J.) KURARAM DATTA *v.* BANOMALI PATRA. **29 I.C. 838.**

——— **S. 44**—*Fraud—Defence—Onus.*

In a suit for rent against deft. as Mokarrandar of certain lands in the village where the deft. raises the plea that an entry in the record of rights that he is a patnidar, operates as *res judicata*, it is highly obligatory on them to prove that such entry operates as *res judicata*, and the plff. may in such cases raise the objection that the entry was obtained by fraud. (*Mookerjee and Beachcroft*, JJ.) MOZAFFAR ALI *v.* KALI PRASAD SAHA **19 C.L.J. 29= 22 I.C. 789=18 C.W.N. 271.**

——— **S. 44** — *Fraud—Application under S. 47, C.P.C.—Evidence, admissibility of.*

It is open to an applicant seeking to set aside an execution sale to show by evidence that it was brought by the fraud, collusion, etc. (*Brett and Sharfuddin*, JJ.) RAMDHANI SHA *v.* TOPI BIBI. **21 I.C. 938=18 C L J. 261.**

——— **S 44**—*Competent Court—Compromise decree—Not objected to—Effect—Bengal Tenancy Act, Ss. 29 and 147-A—Irregularity and nullity.*

In a suit against three brothers, a decree was passed against them on a compromise by one of them without the knowledge of the others, who however, raised no objection to it. *Held*, that they will be bound by the decree unless it could be shown to have been obtained by fraud. Under S. 147. B.T. Act a Court is not 'competent' within S. 44, Indian Evidence Act to pass a decree on a compromise which is illegal and ineffective the contract being in contravention of S. 29 of the B.T. Act. (*Coxe and Chatterjee*, JJ.) (SURJUG SARAN LAL *v.* DUKHIT MAHTO. **18 I.C. 809=17 C.W.N. 496.**

——— **S. 44**—*Fraud—Person affected by—Right of suit.*

A person affected by fraud can impeach it and sue to set aside the results. (*Caspersz and Sharfuddin*, JJ.) JAGADHAR GHOSE *v.* MIDNAPUR ZAMINDARI COY. **17 I C. 126= 16 C.L.J. 141.**

——— **S. 44**—*Admissibility of a decree for rent obtained by one co-sharer in a suit by another co-sharer.*

Where the tenant holds on one contract of tenancy and each co-sharer claims to receive proportionate rent from him a decree obtained by one co-sharer is admissible in a suit for rent by another co-sharer to prove the rate of rent. (*Mookerjee and Carnduff*, JJ.) RAM DAHU ROY *v.* DHANWANTON KOER. **15 I.C. 624= 17 C.W.N. 1016.**

——— **S. 44**—*Fraud—Plea in defence—Suit for possession.*

A plea of fraud can be taken at any time in defence though the person pleading has not sought to set aside the transaction; lapse of time will not affect the plea under certain circumstances. (*N. R. Chatterjea*, J.) KALI KUMAR VIDYARATNA *v.* KASHI CHANDRA MITRA. **11 I C. 882.**

——— **S 44**—*Gross negligence is on the same footing as fraud.*

Gross negligence on the part of the next friend or guardian-*ad litem* of a minor party to a suit stands on the same footing as fraud or collusion and it is open to a defendant to impeach a prior judgment on the ground of gross negligence of his then guardian, 27 C. 11; 16 I.C. 543, Ref. Where the plea of gross negligence as avoiding a prior judgment was not taken specifically and in distinct language but the issues framed by the Court were wide enough to cover such a plea, and the parties adduced evidence on it, it is not open to the Court thereafter to refuse to consider the plea. (*Oldfield and Venkatasubba Rao*, JJ.) KARRI BAPANNA *v.* SUNKARI YERRAMMA **33 M.L.T. 46 (H C.)=18 L.W. 49= (1923) M.W.N. 452=1923 Mad. 718.**

——— **S. 44**—*Fraud—Compromise decree—Defence of fraud—Omission to sue.*

Under S. 44 of the Evidence Act a party to a compromise decree can prove that his consent to it was obtained by misrepresentation and fraud without bringing a fresh suit to set it aside, 12 C. 166; 27 C. 11, Ref. (*Ayling and Tyabji*, JJ.) BOMMAREDDI POLIREDDI *v.* BOMMAREDDI BAPIREDDI. **30 I.C. 639.**

——— **S. 44**—*Suit in ejectment—Title based on Court-sale—Proof of fraud in such sale.*

In an ejectment suit, were plff. relies on his title as purchaser in a Court-auction the deft.

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may adduce proof of fraud in such sale. (*Sankaran Nair and Bakewell*, JJ.) GNANIAR RAOTHER *v.* KRISHNA AIYER. **1 L W. 208 = 23 I.C. 1.**

——S. 44—*C.P.Code, S.* 11—*Avoidance of the plea on the ground of fraud.*

The principle of *res judicata* in S. 11 of the C.P. Code is subject to S. 44, Evidence Act, under which the principle does not apply where the prior decree is obtained by fraud. (*Stuart*, J.C.) RADHA KISHAN *v.* WAJIB ALI KHAN.
3 O L.J. 501 = 26 I C. 746 = 19 O C. 334.

——S 45—*Handwriting expert—Value of report—Sanction to prosecute.*

The report of the Government expert, who never came into the witness-box and whose report is not supported even by an affidavit is inadmissible in evidence and should not form the basis of the order directing the prosecution on a charge of forgery. A sanction, based on a piece of evidence that can in no circumstances be called legal evidence and especially when there is positive legal evidence against it is illegal. (*Rafique*, J.) PIARY LAL *v.* KIDARNATH. **21 A L J. 399 = 24 Cr. L J. 900 = 4 L.R. All (Cr.) 92 = 1923 All. 601.**

——S. 45—*Thumb-impression— Decision on—Property.*

Where, in a suit on a promissory note the Appellate Court being unable to believe the evidence on either side, decided the case on the report of the Thumb-impression Bureau to whom it sent the document, the procedure was held to be unwarranted by law. (*Rafique*, J.) CHHAJU *v.* AYUB AHMAD. **28 I.C. 132.**

——S. 45—*Medical examination and report—Report when admissible.*

Where in a criminal case the prosecution tenders in evidence a certificate granted by the Professor of Anatomy in a Medical College as regards the bones submitted to him for examination, the certificate by itself is not admissible in evidence. It must be proved by the person who gave it as a witness in the case. (*Martineau and Crump*, JJ.) EMPEROR *v.* AHILYA MANAJI. **24 Bom. L R. 803 = 47 B. 71 = 1923 Bom. 183.**

——Ss. 45 and 46—*Expert evidence—Technical works—When can be used to contradict.*

Technical works cannot be used to refute an expert witness's opinion unless the passages to be used are put in cross-examination to the witness for him to explain them if he can, 23 C. 1. P C., Ref. to. (*Woodroffe, Chitty and Smither*, JJ.) GRANDE VENKATA *v.* CORPORATION OF CALCUTTA. **22 C.W.N. 7 5 = 28 C.L.J. 32 = 46 I.C. 893 = 19 Cr. L.J. 753.**

——S. 45, III. (c)—*Comparison of handwriting—Expert's evidence.*

The writing with which the comparison is made must be clearly proved to be that of the person alleged, 22 W. R. 272, Rel. on. A

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comparison of handwriting is to be used with great care and caution and especially in a criminal case when a large quantity of apparently different handwriting is under comparison. Where there is no comparison by the expert in open Court before the accused with documents proved or admitted to be in his handwriting the evidence of the expert is inadmissible. (*Holmwood and Sharfuddin*, JJ.) SURESH CHANDRA SANYAL *v* EMPEROR.
39 Cal. 606 = 13 Cr. L J. 289 = 14 I.C. 753 = 16 C W.N. 812.

——S. 45—*Expert opinion—How to be given.*

An expert opinion can better be given by the expert hearing the evidence as to which he is asked an opinion than to give it on a copy of the deposition. (*Jenkins*, C.J, *and Woodroffe*, J.) GOPESSUAI DUTT *v.* BISSESSUR DUTT. **37 Cal. 245 = 13 I.C. 517 = 16 C.W.N. 265.**

——S. 45—*Admissibility of the opinion of an expert.*

The opinion of Government expert for handwriting who is not called as a witness and is subjected to cross-examination is not admissible in evidence. (*Chitty and Chatterjee*, JJ.) PADAMA PRIYA DEBIA *v.* DHARMA DAS.
10 I C. 965 = 15 C.W.N, 728.

——S. 45—*Experts—Value of evidence of.*

The evidence of an expert, however skilled he may be, is ordinarily a matter of mere opinion. However impartial he may wish to be he is likely to be unconsciously prejudiced in favour of the side which calls him. Besides, an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests. (*Shadi Lal*, C.J. *and Leslie-Jones*, J.) HARI SINGH *v.* LACHHMI DEVI.
12 P L.R. 1921 = 59 I C. 220 = 10 P.W.R. 1921.

——S. 45 — *Expert medical opinion—* Post mortem—*If relevant.*

Expert Medical opinion of a Surgeon who conducted *postmortem* examination is relevant. (*Ried*, C.J.) MEHR IYAHI *v.* EMPEROR.
12 Cr. L.J 455 = 12 I.C 93 = 26 P.W.R. (Cr.) 1911.

——S. 45—*Finger prints—Value of—Duty of Court.*

There is nothing in the so-called science of finger prints or the qualification of an expert in it which prevents the Court from applying its own eyes and mind to the evidence and verifying the results submitted to it by experts. The argument in finger print cases rests on a simple deduction from a number of observations of the similarties and differences between the finger prints in question, 27 I.C. 900, Ref. (*Oldfield and Ramesam*, JJ.) PUBLIC PROSECUTOR *v.* VIRAMMAL.
(1922) M.W.N. 642 = 16 L.W 663 = 23 Cr.L.J. 694 = 31 M.L.T. 417 (H.C.) = 1923 M. 178.

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———S. 45—*Handwriting expert — Reception of evidence—Practice.*

To admit the evidence of a handwriting expert, it is not necessary that the handwriting should be actually compared in Court. It is enough if the documents admittedly in the accused's handwriting, are shown to him in open Court and he expresses his opinions thereon, 16 C W.N. 812, Ref. (*Spencer and Phillips*, JJ.) *In re* SITHAVH NAIK.
30 I.C. 751=16 Cr. L.J. 70).

———Ss. 45 and 46—*Opinion of experts—Value of.*

The effect of medical testimony is to render other evidence as to the age of the person medically probable or improbable. (*Kanhaiya Lal*, A. J. C.) SHRIPAL SINGH *v* JAGDESH NARAYAN. 7 O L J 219=
66 I.C. 313=2 U.P.L.R. (J. C.) 77.

———S. 45—*Handwriting expert—Opinion.*

Experts differ in their opinion. When the admitted facts lead to one conclusion and to one conclusion only, it would be unsafe to rely on the testimony of the handwriting expert. (*Das and Adami*, JJ.) SHEOTAHAL SINGH *v.* ARJUN DAS. (1920) Pat. 155=
56 I.C. 879=1 P.L.T. 136.

———S. 45—*Expert evidence—Cross-examination—Opinion.*

If a finger print expert has not been cross-examined for the purpose of impeaching impression submitted for his consideration and as to the test to which he had put a particular finger print, the weight to be attached to such witness's evidence cannot be diminished by applying to it considerations to which the witness's attention was never directed. (*Mullick and Atkinson*, JJ.) SARWAR KHAN *v.* EMPEROR. 55 I.C 273=21 Cr. L J. 257.

———S. 45—*Trade mark, limitation of—Expert opinion whether admissible.*

Expert opinion as to whether goods of a particular firm bearing particular trademarks alleged to be imitation would be likely to deceive the ultimate purchasers to buy imitation goods in place of genuine ones, is not a question of art or science and so not admissible, and therefore the Court itself must decide whether the marks complained of, are likely to deceive the public. (*Crouch*, A. J. C.) MACDONALD AND CO *v.* HOLLAND AND MOSS
41 I.C. 539=10 S L.R. 175.

———Ss. 47 and 73—*Handwriting—Proof—Modes of.*

The ordinary methods of proving handwriting are by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the handwriting under S. 47; it may be also done by a comparison of handwriting under S. 73 of the Act and by the admission of the persons against

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whom the document is tendered, (*Mookerjee and Buckland*, JJ.) SAROJINI DASI *v.* HARI DAS GHOSH, 26 C.W.N. 113=34 C L J 373=
49 C. 235=1922 C. 12.

———S. 47—*Handwriting — Evidence of persons acquainted.*

The evidence of persons acquainted with the handwriting of a person by whom the document is supposed to be written is admissible, though they are not experts. (*Kensington*, C. J. *and Shadi Lal*, J.) *In the matter of* BAICHANDA SINGH. 18 P R. 1915=
12 P.W.R. (Cr.) 1915=28 I.C. 722=
16 Cr. L.J. 338.

———S. 47—*Handwriting — Evidence of persons acquainted with.*

The evidence of persons acquainted with the handwriting of a person by whom the document is supposed to be written is admissible though they are not experts. (*Shah Din*, J.) JALAL-UD-DIN *v* EMPEROR.
147 P L R. 1912=13 Cr. L.J. 563=
15 I.C. 979=18 P.W.R. (Cr.) 1912.

———Ss. 47, 73—*Expert evidence—Value of—What must be proved.*

In a case of forgery the only chief evidence being an expert's examination of the forged document as compared with the other documents alleged to be in the handwriting of the accused, the other documents must be strictly proved to be in his handwriting. A mere statement therefore by a witness that it is the handwriting of the accused is no evidence if he is not able to say how long ago they were written. In arriving at a conclusion of the authorship of the forged document the expert should show marked peculiarities in this handwriting of the accused which are reproduced in the forged document and when the writing has no such peculiarities, the comparison is of no consequence and cannot be relied on. Also the fact that the disputed samples are put separately from the standard ones for the examination lessens its usefulness. A conviction cannot be based on an expert's comparison, if it is not supported by corroborative evidence. (*Sundara Aiyar and Spencer*, JJ.) *In re* BEAS SUB VENKATA ROW. 36 Mad 159=
(1912) M.W.N. 125=11 M L T 93=
22 M L.J. 270=14 I C. 418=
13 Cr. L.J. 226.

———Ss. 47 and 48—*Medical evidence—Condition and state of health of testator.*

Where the general condition and state of the health of a person is in issue, isolated extracts from medical works ought not to be preferred to evidence of a medical man, who should be examined with reference to the symptoms deposed to by the witnesses, and to whom the extracts might be put. (*Kanhaiya Lal and Daniels*, A.J.Cs.) SHEO BAHADUR SINGH *v.* BENI BAHADUR SINGH. 51 I C. 419=
6 O.L.J. 178.

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———S. 47—*Handwriting—Comparison of—Weight due to—Resemblance of signature—Denial of signature—Onus.*

Although it is true that under the Evidence Act comparison of handwriting is legitimate enough and the view of persons competent to express opinions mey be in many cases of considerable value, the opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. Indeed so uncertain and inexact is the science of the study of caligraphy that it has been for some years past the tendency to regard evidence even of experts as of some what inconclusive character. The mere fact that there is a resemblance between the signature alleged to be false and a signature admitted to be genuine does not carry great weight. If a signature is denied the onus of proving it is on the party relying on its genuineness. (*Bucknill*, J.) BATAHU JHA *v.* PARMESHWAR RAI. **64 I.C. 234.**

——— S. 48—*Opinion of the Bar—Admissibility.*

Quaere.—Whether the opinion of the Bar as to the adoption of special customs of a Hindu family by sects of Mahomedans is admissible under S. 48 of the Act. (*Beaman*, J.) ADVOCATE GENERAL *v.* JIMBABAI **41 Bom. 181 = 31 I.C. 106 = 17 Bom. L.R. 799.**

———S. 49—*Usages of body of men.*

The words "usages of any body of men" in S. 49 do not cover inferences or conclusions that may be drawn on the basis of past experience. (*Shah Din*, J.) BEJA *v.* EMPEROR. **13 P.R. 1914 Cr. = 16 Cr.L.J. 33 = 26 I.C. 625 = 223 P.L.R. 1915.**

———S. 49—*Opinion evidence—Validity.*

Opinions of the members of Malabar Tarwad about the status of the family do not affect the real status of the family. (*Benson and Sundara Aiyar*, JJ.) MANU *v.* MUNDA. **9 I.C. 849 = (1911) 1 M.W.N. 281.**

——— S. 50—*Legitimacy—Opinions of relations and members of the family.*

On a question of legitimacy, the opinions of relations and members of the family are entitled to weight. (*Lord Atkinson*) SADIK HUSSAIN KHAN *v.* HASHIM ALI KHAN. **38 All. 627 = 31 M.L.J. 627 = 14 A.L.J. 1243 = 19 O.C. 192 = 18 Bom. L.R. 1037 = 21 C.W.N. 130 = (1916) 2 M.W.N. 271 = 21 M.L.T. 40 = 1 Pat. L.W. 127 = 40 C.L.J. 22 = 36 I.C. 104 = 25 C.L.J. 363 = 6 L.W. 378 = 10 Bur. L.T. 140 = 43 I.A. 212 (P.C.).**

[On appeal from 18 I.C. 882 = 14 O.C. 316]

——— S. 50—*Legitimacy—Recognition of marriage by all relations, etc.—Presumption of.*

Where a man and a woman, were proved to have been recognised by all persons concerned, as man and wife, so described in important documents and their daughters were respectably married as would be natural in the case of legitimate children, *held*, that these facts, following upon a ceremony of marriage which undoubtedly took place, though its validity attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson*) MOUJI LAL *v.* CHANDRABATI KUMARI. **38 Cal. 700 = 15 C.W.N. 790 = (1911) 2 M.W.N. 91 = 13 Bom. L.R. 534 = 14 C.L.J. 72 = 10 M.L.T. 53 = 11 I.C. 502 = 21 M.L.J. 933 (P.C.).**

———S. 50—*Instances of conduct.*

In questions of relationship, recital or omission of the names of certain persons during ceremonies and the observance of pollution, are instances of conduct within the meaning of S. 50 so as to make them admissible in evidence. (*Oldfield and Tyabji*, JJ.) RAMKRISHNA IYER *v.* CHINA VENGAMMAL. **26 I.C. 110.**

——— S. 50—*Proof of marriage.*

S. 50 requires direct proof of marriage in cases under S. 498, I.P.C., and conviction based upon opinion evidence is illegal. (*Mittra*, A.J.C.) SYED MUNIR *v.* EMPEROR. **18 Cr.L.J. 1016 = 42 I.C. 760 = 14 N.L.R. 28.**

———S. 50—*Pedigree filed by ancestors in prior litigation—Admissibility.*

Where the statement of a pedigree by predecessor-in-interest of the parties was filed in the prior suit but no final decision was given thereon, it could yet be allowed in evidence in a subsequent suit as the statement of their predecessor-in-interest as to the existence of the relationship. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BHABULI SINGH *v.* KHETAL SINGH. **21 I.C. 274.**

——— Ss. 52, 53 and 54, Cr. P.C. (Act V of 1898), S. 110—*Reputation—List of—Crimes committed—If inadmissible.*

In a proceeding under S. 110, a list of crimes which a Police officer has suspected the accused to have committed, is inadmissible to establish the reputation of the accused. (*Tudball*, J.) BABU PRASHAD *v.* EMPEROR. **13 I.C. 102 = 13 Cr.L.J. 9.**

———Ss. 51 and 163—*Previous conviction—Accused found guilty.*

Where a previous conviction is relevant with reference to the question of the applicability of S. 562 of the Cr. P.C. and also on the question of punishment, it may be taken into consideration in giving punishment after the accused is found guilty. (*Heaton and Shah*, JJ.) ISMAIL ALI CHAI *v.* EMPEROR. **39 Bom. 376 = 16 Cr.L.J. 83 = 26 I.C. 895 = 16 Bom. L.R. 934.**

———S. 54—*Deposition of a witness in prosecution under S. 107, Cr.P.C.*

Statement by a prosecution witness in a prosecution for a riot that he had brought a

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case under S. 107, Cr. P.C., against some of the accused who had been bound down, is admissible not for proving the bad character of the accused but as part of the *res gesta*, the events which had transpired before and which led up to the riot with which the accused were charged. (*Chitty and Richardson*, JJ.) SAMARUDDIN *v.* EMPEROR, **13 Cr. L.J. 821 = 17 I C. 365 = 40 Cal. 367.**

——S. 54—*Past history of accused if relevant.*

The past history of a gang of dacoits would be significant only if an offence under S. 400 of the Penal Code has been made out. (*Caspersz and Sharfuddin*, JJ.) KEDAR SUNDAR *v.* EMPEROR. **13 Cr. L.J. 89 = 13 I.C. 279 = 16 C.W.N. 69.**

——S. 54—*Evidence of bad character.*

The fact that an accused is of bad character or is reputed to be a thief or a habitual thief or belonged to a gang of thieves is no evidence against him for a charge under S. 401 of the O.P.C. (*Shah Din*, J.) BEJA *v.* EMPEROR. **13 P.R. 1914 Cr. = 16 Cr. L J 33 = 26 I.C. 625 = 223 P L.R. 1915.**

—— S 54—*Evidence of previous conviction—Not to be given.*

During the trial of the accused for a substantive offence, the evidence about the previous conviction should not be recorded. Such evidence is forbidden by S. 54 unless the accused offers evidence of good character. (*Jwala Prasad and Sultan Ahamed*, JJ.) TEKA AHIS *v.* EMPEROR. **22 Cr. L J. 219 = 60 I.C. 331 = 5 P.L.J. 706.**

——S. 55—*Character, evidsnce of, in civil cases.*

In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant, but evidence can be given only of general character and not of particular acts by which character is shown. (*Maung Kin*, J.) CHRISTENSEN *v.* CASTOR. **41 I.C. 696**

—— Ss. 53 and 57—*Personal knowledge of Judge—Judge confused to decide because of the personal knowledge.*

A Judge should not import into a case his own knowledge of particular facts, 26 W.R. 55; 7 W.R. 27, Rel. If the presiding officer of a Court feels considerably embarassed when he is called upon to try a disputed question of fact of which he has personal knowledge he should decline to hear the matter. (*Mookerjee and Beacheroft*, JJ.) LAKSHMI NARAIN KHANNA *v.* GURU DATTA MEHRA. **16 I.C. 859.**

——S. 56—*Judicial notice — Notorious facts.*

Judges are entitled to take judicial notice of the notorious facts of the social life of any class in the community without requiring actual

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positive evidence. (*Miller and Sundara Aiyar*, JJ.) PUBLIC PROSECUTOR *v* KANNAMMAL. **13 M.L T. 131 = 24 M L J. 211 = 14 Cr. L J 33 = 18 I C 257 = (1913) M.W.N. 207.**

——S. 56—*Judicial notice—Matters within the personal knowledge of Judge.*

Per *Sundara Iyer*, J.—A Judge is not entitled to rely on specific facts not proved by evidence in the case but known to him otherwise. But he may use his general knowledge and experience in determining the credibility of the evidence adduced before him, 38. C. 153, Expl. and Dist. Per *Sadasva Iyer*. J.—A Judge may use even his personal knowledge of concrete private facts, provided he mentions the knowledge to the parties and they do not object to his deciding the case and he must be allowed to use his knowledge of public, historical or scientific facts in coming to a conclusion. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) MULPURA LAKSHMAYA *v* VARADARAJA APPAROW. **36 Mad. 168 = 23 M.L.J. 624 = (1912) M.W.N. 1193 = 17 I C 353 = 12 M.L.T. 561.**

——S 57—*Land Revenue Report—Admissibility—Judicial notice.*

A Court is not entitled to take judicial notice of Land Revenue Reports and they are inadmissible unless formally proved. (*Coxe and Walmsley*, JJ.) BOODHAN GOPE *v.* SAIRA. **27 I.C. 470 = 20 C.L J. 516.**

——S. 57—*Matter of public notoriety—Train service.*

The Court cannot take, as matter of public notoriety, the running time of trains and the number of trains within a given time and other facts involved in such an inquiry. (*Mookerjee and Walmsley*. JJ.) GOBIND CHANDRA SAHA *v.* DWARKA NATH PATTA. **20 C L J 455 = 26 I.C. 962 = 19 C.W.N. 489.**

——S. 57—*Signature of judicial or executive officer.*

The Court can take judicial notice of signature of judicial or executive officer. (*Ayling*, J.) *In re*, CHOLANCHERI AYAMMMAD. **44 M L J. 557 = 17 L.W. 615 = 32 M.L.T. 300 = (1923) = M.W.N. 290 = 24 Cr. L J 403 = 1923 M. 600.**

——S. 57—*Books on custom* — Bhutala Pandya's Code.

Bhutala Pandya's Code has not often been proved to be genuine and authoritative and so the Court might not take judicial notice of its contents (*White*, C.J. *and Tyabji*, J.) SECY. OF STATE *v.* SANTARAYA SHETTY. **25 M L J. 411 = 14 M.L.T 348 = 21 I.C. 432 = (1914 M.W.N. 333.**

——S. 57—*Matter of history—Admissibility of letters.*

Letters of the Jesuit fathers, though admissible strictly to prove the facts of history,

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could not be used to prove where certain missionaries lived or when they died. (*Benson and Sundara Iyer*, JJ.) AMBALAM PAKEYJA UDAYAN *v.* BATH 36 Mad. 418= 13 I.C. 599=(1912) M.W.N. 152= 24 M.L.J. 630.

——S. 57 (1)—*Judicial notice — Paper Currency Act.*

The Courts should take judicial notice of the provisions of a statute *e.g.*, Paper Currency Act, though the objection is not raised by the parties. (*Shaw*, J.C.) HIDAYAT ALI BEG *v.* NGA KYAING. 24 I.C. 721= (1914) II U.B.R. 13.

——S. 57 (7)—*Magistrate in Native State.*

A "Magistrate" in a Native State does not come within S. 57 (7). (*Heaton and Shah*, JJ.) EMPEROR *v.* DHANKA AMRA. 15 Cr.L.J. 433=24 I.C. 169= 16 Bom. L.R. 261.

——S. 58—*Admission by some of the executants—Effect of.*

An admission of the exoutant's signature by one of his sons in a suit on a mortgage relieves plff. of any further responsibility of proving the mortgage-deed so far as that deft. is concerned. (*Beaman and Heaton*, JJ.) LAKHICHAND CHATRABHUJ MARWADI *v.* LALCHAND GANPAT PATIL. 42 Bom. 352= 45 I.C. 555=20 Bom. L.R. 354.

——S. 58—*Copy admitted without objection in lower Court.*

A certified copy of a written statement was put in the lower Court in the presence of plaintiff's counsel and without objection by him. *Held*, he cannot be permitted in the High Court to object that only the original could have been received as proof. (*Martineau and Campbell*, JJ.) THE FIRM OF DURGA DAT JAGAN NATH OF DELHI *v.* THE FIRM OF RAM PARTAB SUKH DAYAL OF DELHI. 1923 Lah. 138.

——Ss. 58, 68—*Mortgage—Attestation—Proof of admission of execution.*

Even where execution of a mortgage is admitted it is open to the Court to require proof of valid attestation, 35 Mad. 607, Rel. (*Abdur Rahim and Oldfield* JJ.) MUNNAPPA CHETTIAR *v* VELLACHAMI MENNADI. (1918, M.W.N. 853=25 M.L.T. 19= 49 I.C. 278=9 L.W. 5.

——Ss. 58 and 92, cl. (4)—*Registered mortgage—Subsequent oral agreement to take less—Admissions of parties.*

A subsequent oral agreement to take less than is due under a registered mortgage is admissible in evidence if the oral agreement is admitted is the pleadings of the parties. No question of the admissibility of evidence, oral or documentary arises if proof is dispensed with under S. 58 of the Evidence Act or

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under the provisions of the C.P.C. consequent on the admissions of the parties. (*Wallis*, C.J., *Oldfield and Seshagiri Aiyar*, JJ.) MALLPPA *v.* MATTAM NAGA CHETTY. 42 Mad. 41= 8 L.W. 522=(1918) M.W.N. 719= 35 M.L.J. 555=48 I.C. 158=24 M.L.T. 400.

——S. 58—*Document itself inadmissible.*

Admissions of parties regarding the execution or contents of the documents themselves inadmissible in evidence, should not be acted upon when the liability is denied for such defects. (*Sadasiva Iyer and Phillips*, JJ.) SEETAMMA *v.* KRISHNASWAMI ROW. (1916) 2 M.W.N. 33=31 M.L.J. 240= 35 I.C. 18=20 M.L.T. 44.

——S. 58—*Proof of fact admitted—Power of Court to call for.*

Courts can call for proof even of facts admitted under S. 58 and there may be cases where the failure to call for proof may be so improper as to make the High Court interfere even in a second appeal. (*Sadasiva Aiyar and Tybaji*, JJ.) APPAVA CHETTIAR *v.* MANJAPPA GOUNDAN 14 M.L.T. 117= 20 I.C. 752=25 M.L.J. 339.

——Ss. 58 and 70—*Admission of execution—Proof of attestation.*

Under S. 70 of the Evidence Act, the admission of execution of a mortgage document is sufficient proof as against the executant himself, but there is no authority for the proposition that the document is for that reason binding upon the other defendants who were not parties to it. As against the latter the document must be proved according to law unless S. 58 of the Evidence Act applies to the case and relieves the plaintiffs from the burden of proving attestation in respect of any of the defendants who have admitted the fact of the attestation. (*Mullick and Rose*, JJ.) ARJUN SAHU *v.* KELAI RATH. 2 P. 317=1923 P. 436.

——Ss. 58, 63, 65—*Copy of document—Admission without objection — Secondary evidence—Powers of appellate Court.*

When a document has been admitted in the Court of first instance without any objection, the appellate Court is not entitled to allow any objection to be taken to its admissibility at the appellate stage; and if the document admitted is a copy, it is not open to the appellate Court to consider whether the provisions as to secondary evidence have been complied with. (*Coutts and Das*, JJ.) RAMLOCHAN MISRA *v.* PANDIT HARINATH. 3 P.L.T. 397= 1922 P. 366.

——Ss. 58, 91 and 92—*Partition admitted—Unregistered deeds—If admissible.*

Where the fact of a prior partition having taken place is admitted by both parties, the same need not be proved and the instrument though not registered is admissible for a collateral purpose. (*Heald and Lentaigne*, JJ.) MAUNG PO KIN *v.* MAUNG SHWE BYA. 1 Rang 403=1924 Rang. 155.

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———Ss. 58 and 68 — *Unregistered and unattested mortgage — Admission of—Subsequent purchaser.*

A purchaser of certain lands who admitted the existence of a prior mortgage on the lands could not get the lands without paying the mortgage money even thougn the mortgage was unregistered. An admission made by a party when examined as a witness comes within the purview of S. 58, Evidence Act. (*Mc Coll*, A.J.C.) NGA TUN LU *v.* NGA SHWE CHIN.
29 I.C. 698 = 8 Bur. L.T. 18.

——— S. 58—*Mortgage before the Transfer of Property Act*, 1882—*Admission—Proof.*

Where a mortgage, executed before the Transfer of Property Act, came into force, is admitted to have been executed, proof thereof will be dispensed with under S. 58 of the Evidence Act, even though it was effected by an unregistered instrument for more than Rs. 100. *Quaere.*—Would the defect of want of jurisdiction be cured by such admissions after the Transfer of Property Act came into force? (*Twomey*, J.) MA SHIR HYPE *v.* MAUNG SENU.
20 I C 666 = 6 Bur. L T. 131.

———Ss. 58 and 68—*Admission of execution of document — Production of document if necessary — Validity of same, if can be questioned.*

Where the execution of a mortgage-deed is admitted, production of the same is dispensed with; in such a case, the Court can take no account of the validity or informality of the document, *i.e.*, attestation by one witness. (*Twomey*, J.) MAUN KAN *v.* MAUNG MYAT THAING.
11 I.C. 850 = 4 Bur. L.R. 182.

——— S. 58—*Admitted document—Proof not necessary—Effect where insufficiently stamped.*

No proof is necessary of a document which has been admitted by other side; the fact that such a document is not properly stamped is not a ground for dismissal of a suit based upon it. (*Twomey*, J.) RAHIMATOLLA *v.* M. MURRY.
11 I.C 810 = 4 Bur. L.T. 171.

———S. 59—*Oral evidence—Document not ambiguous.*

Evidence of the conduct of the parties is not admissible to prove the intention when the document is not ambiguous, (1911) A.C. 487 Foll. (*Abdur Rahim and Sundara Iyer*, JJ.) PRESIDENT TALUK BOARD, PEDDAPUR *v.* CHILAKAMANI.
12 I C 146 = (1911) 2 M.W.N 238.

———S. 63—*Document not in existence.*

Secondary evidence of a document which has not been proved to have been written by the accused or even existed, cannot be admitted. A copy of a newspaper publishing a defamatory letter cannot be used as secondary evidence to prove a letter which has not been found or even proved to have existed. (*Richards*, J.) RAMLAL BALARAM *v* EMPEROR
12 Cr. L J. 259 = 10 I C. 832 = 8 A.L.J. 302.

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———S 63—*Exhaustive of kinds of secondary evidence—Translation of document in judgment not* inter partes *not admissible.*

S. 63 of the Evidence Act is exhaustive of the kinds of secondary evidence admissible under the Act. Where the terms of a document were sought to be proved by a judgment containing a translation thereof in a suit which was not between the same parties or their representatives in interest. *Held* neither the translation of the document nor the statement in the judgment was secondary evidence of the contents of the document, 26 I.C. 618; 4 L.W. 331; 42 M.L.J. 324, Ref. (*Spencer and Deva Doss*, JJ.) JAGANNATHA NAIDU *v* SECRETARY OF STATE FOR INDIA.
43 M L J 37 = 16 L.W 11 = 31 M.L.T 46 (H C) = (1922) M.W.N. 432 = 1922 Mad. 334.

———Ss. 63, 32 (2), 35, 65 and 91—*Lost grant—Secondary evidence.*

As Ss. 65 and 91 make it clear that when a written grant is lost secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure to the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 63, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL.
35 I.C. 201 = 4 L W. 331.

———Ss. 63 and 65—*Secondary evidence—Public document—Copy not available.*

Where a certified copy of a lost public document is not available other secondary evidence of its contents is admissible. 5 Cal. 58; 6 M. 80, Foll. A register of orders issued by the Collector in charge of a Zamindari kept in the ordinary course of business may be taken to be an accurate copy of the orders issued and may be admitted as secondary evidence of such orders (*Wallis*, C. J. *and Hannay*, J.) KRISHNARAO *v.* MUTHUNGI BUCHI
28 I C 808.

———S. 63, 65 and 66—*Secondary evidence—Admissions—Destruction of or absence of original—Suit upon mortgage document—Forgery—Decree on—Admission.*

Where a party sues to redeem a mortgage putting forward a certain document as embodying the transaction and that document is found to be a forgery, a decree cannot be given to him on the basis of the written admissions of the deft as to the contents of the mortgage. No question of secondary evidence arises, without proof of the existence and due execution of the original. Per *Spencer and Tyabji*, JJ.)—S. 63 of the Evidence Act does not exhaust the kinds of secondary evidence that may be adduced. Per *Tyabji*, J.—Having regard to Ss. 65 and 66 of the Evidence Act written admissions of the contents of documents are inadmissible without proof of the original having been destroyed or being otherwise not available for production. (Per *Sadasiva Iyer*, J.) When the plff. puts forward a forged document as primary evidence, it cannot

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be held that defts. are put upon notice that they would be required to produce the counterpart of the genuine document. (*Spencer, Tyabji and Sadasiva Iyer, JJ.*) KALLI-NIAMMA *v.* NARAYANA NAMBI-R. 28 M L J 263 = 17 M.L.T 170 = 28 I C 69 = (1915) M.W.N. 105.

——— S. 63—*Translation of grant contained in official letter—Whether public record — Admissibility of.*

The translation of a grant contained in a letter from one official to another, does not come within the provision of S. 63 and so cannot be admitted as secondary evidence. 26 M. L.J. 99, Ref. (*Kumaraswami Sastri, J.*) AMBALAVANA PANDARA SANNADHI *v.* KUPPACHI JANAKI. 26 I.C. 618.

——— S. 63—*Statement in previous suit referring to document—Secondary evidence.*

A statement by a party or his authorised agent in a previous suit referring to a document which was against his interest is secondary evidence of that document. (*Ashworth, A.J.C.*) RATIPAL SINGH *v.* UDAI BHAN PARTAB SINGH. 53 I C 667 = 6 O L.J. 503.

——— Ss 63 and 65—*Objection as to admissibility of copy not open in second appeal.*

When a copy is admitted in trial Court without objection, objections as to admissibility of the copy shall not be allowed in appeal. (*Coutts and Das, JJ.*) RAM LOCHAN MISRA *v.* HARI NATH MISRA. 3 P.L T. 897 = 1 P. 603 = 1922 P. 565.

——— S. 63, Illus. (c)—*Copy of a copy—Inadmissible.*

A copy of a copy is inadmissible in evidence. When a document is inadmissible in evidence, no question of its construction arises and the party relying upon it must fail. (*Coutts, J.*) ABDUL GHANI *v.* SYED MD RAZA. 1 P L.T. 47 = 51 I C. 941 = 2 U.P.L R. (P.) 58.

——— S. 63 (5)—"*Seen*"—*Meaning of—Illiterate witness.*

As regards the letting in of secondary evidence the word "see" in S. 63 (5) includes also "read over" in the case of a witness who is illiterate and as such cannot himself read it. If it is read over to him it will satisfy the requirements of the section. (*Walsh, J.*) PUDAI SINGH *v.* BRIJ MANGAL. 1923 All 612.

——— S. 63 (5)—*Oral evidence of contents of document.*

Under S. 63, sub-S. (5) of the Evidence Act only a witness who has seen the document and who could have read the document in its original state is entitled to give oral evidence of it. (*Daniels, J.*) RAMJI DAS *v* MIHIN LAL. 1923 All 441.

——— S 63 (5)—'*Person who has seen*'—*Illiterate attestor.*

Where in order to prove a mortgage the only witness called was an illiterate person, he

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cannot be deemed to be one who has seen the execution of the mortgage within S. 63 (5) of the Evidence Act. 12 A.L.J. 239, Foll. (*Gokul Prasad, J.*) JANAKI *v.* RAM KISHORE. 1922 All. 232.

——— S. 63 5—"*Seen*—" *Meaning of—Statement of an illiterate witness as to contents.*

An oral account of the contents of a document given by an illiterate person, who merely saw without understanding the contents thereof, is not sufficient evidence. "Seen" in S. 63 (5) of the Evidence Act means more than the mere sight of the document. The person must have read the contents of the document. (*Tudball, J.*) GHURE *v.* CHATRAPAL. 23 I.C 11 = 12 A L.J. 289

——— S. 63 (5—*Mortgage deed—Secondary evidence—Admissions of party in prior suit.*

The admission made by the mortgagee in a Court in a previous case about the existence and contents of the mortgage-deed is good secondary evidence within S. 63 (5) and sufficiently proves the execution of the deed. (*Lindsay, J.C.*) BAHADUR SINGH *v.* MADHO SINGH. 36 I C 696 = 3 O L J. 319.

——— S. 64—*Mortgage deed—Copy of—If sufficient evidence.*

A copy of mortgage-deed is not sufficient to prove mortgage. (*Tudball, J.*) MAHTA PERSAD MISSER *v.* GAJADHAR LOHAR. 23 I C. 864.

——— Ss. 65 and 145, Illus. (b)—*Loss of document, proof of—Secondary evidence of a lost document, admissibility of.*

Held, that ordinarily if the witness in whose custody a deed should be deposed to its loss, unless there is a motive suggested for his being untruthful, his evidence should be accepted as sufficient to let in secondary evidence of the deed. (*Lord Phillimore*) MUNSHI EHTISHAM ALI *v.* JAMNA PRASAD. 48 I.A. 165 = 61 I C. 299 = 24 O C. 272 (P.C.).

——— S. 65—*Secondary evidence—Written statement, acknowledgment in—Plaint or decree if admissible as.*

Where an acknowledgment in the written statement in a previous suit is relied on, the statement itself or a certified copy thereof must be proved and neither the plaint nor the decree can be admitted as secondary evidence of the same. (*Piggott and Walsh, JJ.*) HARIMURAT *v.* RAMHIT. 61 I C. 490 = 3 U.P.L R. (All.) 179.

——— S. 65—*Certified copy—Original produced in an old suit—Reliability.*

Where the plaintiff sued for a declaration that certain survey numbers were kept joint at a partition between the ancestors of the parties, relying upon a certified copy of a partition-deed passed between the parties, and the copy which was produced showed that the original document was produced in Court in a previous suit. *Held*, the Court could rely on the certified copy as showing the terms of the

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partition there being no reason to doubt, owing to the lapse of time, that the certified copy retained on the file of the previous suit was a correct copy of the original. (*Macleod*, C.J. *and Shah*, J.) CHUDASAMA KHODUBA *v.* TAKHTASANG. **46 B. 32=1922 Bom. 177.**

——S. 65 —*Unstamped document—Secondary evidence not admissible.*

Secondary evidence cannot be given of a lost document which has not been properly stamped as such a document becomes admissible only when the Collector has charged the duty and penalty thereon and written an endorsement on the document submitted to him. (*Macleod*, C.J. *and Shah* J.) HIRALAL *v.* SHANKAR. **45 Bom 1170 = 62 I.C. 637=23 Bom. L.R. 506**

——S. 65 —*Absence of original not explained—Secondary evidence.*

A party to a suit had in possession an unregistered deed of sale of property less than Rs. 100, but he did not produce it before the Court nor could he give a satisfactory account of it. *Held*, that secondary evidence of the contents was not admissible. (*Teunon and Newbould*, JJ.) DOMAI BARA *v.* KEREO KOLITA. **62 I C 444.**

——S. 65 —*Objection to secondary evidence*

If no objection is taken to the admission of secondary evidence of a document by means of oral evidence, such evidence could not be discarded in appeal though the secondary evidence should have been only a certified copy. (*Sinderson*, C.J. *and Mookerjee*, J.) HASMAT ULLAH *v.* HARI MOHAN SARMA. **34 I C. 942.**

——S. 65—*Evidence — Gift— Secondary evidence.*

A petition presented to a Collector by a donor admitting a gift is secondary evidence of a very strong kind of the gift. (*Fletcher and Richardson*, JJ.) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. **25 I.C. 852**

——S. 65—*Entry in settlement—Original or certified copy are the only kinds permissible.*

An entry in a public document such as a settlement record can be proved only by the original or by a certified copy. A finding on a statement which is not admissible to prove the entries can be contested in second appeal. (*Martineau*, J.). RAM *v.* MALIK GHANASHIAM DAS. **1923 Lah. 150 (1).**

——S. 65—*Secondary evidence — When admissible—Discretion of trial Court.*

Secondary evidence of a document may be given when the party offering that evidence cannot, for any reason not arising from his own default, or neglect to produce the original in reasonable time. The question of allowing secondary evidence depends upon the discretion of the Court and where it has been decided by the Judge of First Instance his conclusion should not be overruled except in a clear case

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of miscarriage of justice. Production of secondary evidence does not dispense with proof of the execution of the original document. (*Sir Shadi Lal*, C.J. *and Fforde*, J.) CHUHA MAL *v.* RAHIM BAKSH. **71 I.C. 563.**

——S 65—*Loss of original not proved—Secondary evidence—Effect.*

In a suit based on a promissory note, secondary evidence of its existence and contents cannot be let in when the original itself has not been proved to be lost. (*Broadway and Campbell*, JJ.) RAM SARAN DAS *v* TULSI RAM **1922 Lah. 417.**

——S. 65 —*Unstamped bond — Certified copy not admissible.*

Copy of an unstamped bond on the loss of the bond, is inadmissible in evidence. (*Shadi Lal*, C. J. *and Harrison*, J.) MUHAMMAD AYUB *v* RAHIM BAKSH. **3 L 282= 1922 Lah. 401.**

——S 65—*Suit on lost bahi—Loss of bahi how proved—Police report.*

Strict proof of a lost bahi must be given and the police file of an alleged theft from plff.'s house and the statement of the thanadar made in another case are inadmissible to prove the loss of bahi. (*Wilberforce*, J.) BARU *v.* SUKA SINGH. **4 Lah. L.J. 418.**

——S 63—*Secondary evidence—Lost bahi —Police report.*

Where a suit is based on a lost bahi strict proof of the loss must be given and a Police Sub-Inspector's report is not a sufficient proof of such loss. (*Wilberforce*, J.) ASA RAM *v.* SUKHA SINGH. **4 Lah L J. 416.**

——S. 65 —*Document in possession but not produced—Account books—Plaintiff in possession of them.*

In a suit for accounts it was proved that the books of account were in possession of plff. Plff. could not adduce secondary evidence of the account books as their loss was not proved. (*Shadi Lal and Dundas*, JJ.) THAKARDAS *v.* GOVARDHAN. **56 I.C. 940.**

—— S 65 —*Unstamped document—Contents —Proof—Suit for value or return of goods delivered.*

A claim for the value or return of goods delivered cannot be proved by an unstamped agreement between the parties. (*Coutts-Trotter and Seshagiri Iyer*, JJ.) CHAMI *v.* ANA PATTAR. **33 I.C. 661.**

——S 65 - *Objection to secondary evidence —Objection when to be taken.*

Objection to admission of secondary evidence must be taken at the time, the other party produces it for admission and not at a late stage. (*Tyabji and Phillips*, JJ.) UPPARA HANUMANTHA *v.* PEDDAPALLE SAMACHARLU. **33 I.C. 188 = 1916 1 M.W.N. 9.**

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———S. 65—*Document in possession but not produced, but found inadmissible in previous suit—Secondary evidence.*

Secondary evidence of a document which is not produced but which in a previous suit was found to be inadmissible as being not registered, cannot be given. (*Sankaran Nair and Oldfield*, JJ.) NATARAJA SARMA *v.* RAMABHADRA NAIDU GARU. 28 I.C. 853.

———S. 65—*Unstamped document—Secondary evidence of—Whether admissible.*

Secondary evidence is not admissible to prove the contents of an unstamped document. (*Sundara Aiyar*, J.) SWAMINATHA PILLAI *v.* SUNDARA RAJA PILLAI. 12 I.C. 127 = (1911) 2 M.W.N. 166.

———S. 65—*Suit on mortgage—Non-production of original — Secondary evidence not admissible.*

Where no reasons are shown for the non-production of the original of a mortgage, a suit on a copy of the document is bound to fail. (*Batten*, J.C.) BHAIRON SINGH *v.* HINDU SINGH. 1922 Nag. 119.

——S. 65—*Document lost—Proof of.*

Where the explanation for the non production of a document is that it is lost, the regular course to adopt is to prove the loss before tendering secondary evdience, but the omission to do so is an irregularity within S 99 of the C.P. Code. (*Drake-Brockman*, J.C.) SURAT SINGH *v.* RANI. 59 I.C. 461.

———S. 65—*Unstamped document.*

If the unstamped original of an instrument is lost, oral evidence to prove its contents is inadmissible. (*Mitra*, A.J.C.) PENTAYA *v.* KISHORE. 56 I C. 249 = 16 N.L R. 68.

———Ss. 63, 64 and 32—Bhat's *Register—Genealogy—Copies of*—Bhat's *books.*

Copies of entries of genealogies in *Bhat's* books are not admissible in evidence where the originals are in existence but not produced. The originals are admissible under S. 32 (2) and (5) of the Evidence Act as it is a recognised duty and pursuit of a *bhat* to keep a genealogy of families where he officiates. (*Kotwal and Findlay*, A.J.Cs.) HAZARI LAL *v* HAR GOVIND. 43 I.C. 375.

——S. 65—*Plaint—Nature of evidence, to prove.*

Direct evidence is necessary to prove a plaint which is a private document and without such evidence a copy of the plaint is inadmissible. (*Lindsay and Daniels*, A J. Cs). AHMAD KHAN *v.* HURMUZI KHANAM. 61 I C. 177 = 8 O.L J. 47.

———S. 65—*Mortgage—Redemption suit—Secondary evidence.*

Where in a suit for redemption the mortgagors relied only upon the secondary evidence

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of the mortgage in the shape of certain documents mentioning or admitting the mortgage, *held* that they could not succeed. (*Stuart*, A.J.C.) NIAMET KHAN *v.* DEPUTY COMMISSIONER, KHORI. 25 I C 816 = 1 O.L.J 442.

——S. 65—*Oral evidence of persons who heard judgment pronounced are not admissible in evidence.*

What is required is an oral account of the contents of the judgment or decree by some one who had read the one or the other. (*Mccoll*, A.J.C.) MAUNG CHIT *v.* MAUNG THA KU AND ONE. 4 U.B.R. 135 = 1923 Rang. 113.

——S. 65—*Secondary evidence—What is—Mortgage document.*

Secondary evidence of a document is evidence of its contents, and oral evidence as to the terms of a mortgage which have been reduced to writing is not evidence of the contents of the document U B R. (1907-1909) II, p. 13, Foll. (*Saunders*, J.C.) MAUNG PO DIN *v.* MAUNG PO NYEIN. 66 I C 360 = (1921) 4 U.B.R. 80.

———S. 65 (a)—*Non production of document by defendant—Plaintiff entitled to give secondary evidence.*

The uncontradicted testimony of the plff.'s fruitless search for an original document, coupled with non-production of the document by the deft. in possession of it with knowledge that he will be required to produce it, enables the plff. under S. 65 (*a*) of the Act to give secondary evidence of the contents of the document. (*Walsh*, J.) MUHAMAD KAMIL *v.* HABIBULLAH. 37 I C. 794.

———Ss. 65 (a) and 66—*Secondary evidence—Court's discretion.*

Per *Walsh*, J.—Ss. 65 and 66 must be read together and the adverse party must be presumed to be under the impression that he would be required to produce the original so as to dispense with the necessity of a notice to produce, unless the original is shown or appears to be in the possession of the person against whom the presumption is drawn. Where secondary evidence is admitted of a very old document, Court's discretion in the matter should not ordinarily be disturbed. (*Walsh and Sunder Lal*, JJ.) MANGRA *v* BEDI RAM. 35 I C 328.

——S. 65 (a)—*Document in possession but not produced by person having proper custody—Registration copy and admission by witness, if sufficient proof.*

Where a power-of-attorney was not produced by a person having proper custody thereof, the production of a Registration copy of it and admission by a witness that the power was executed is sufficient proof of it. (*Knox* C J. *and Griffin*, J.) GOPAL RAI *v.* SARWI BEGAM. 14 I.C. 243.

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——S 65 (a) and (f) *Non-production of document—Mortgage-deed—Secondary evidence—Registration Act, S. 57 (5).*

Plff. failed to obtain the original mortgage-deed in possession of the deft. and therefore produced a certified copy. One of the three witnesses was dead and the remaining two on seeing the copy, could not remember whether they had attested the deed. One of the two witnesses said that the executants mentioned in the copy executed a mortgage at or about the time mentioned in the copy. Plff. examined another person who proved a note in the papers of plff. about payment of interest due on the deed. *Held*, that the copy was admissible in evidence under S. 65 (*a*) and (*f*) of the Evidence Act read with S. 57 (5) of the Registration Act. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SALEHA BIBI *v.* OUDH COMMERCIAL BANK LTD.

35 I C 613=3 O L J. 432.

——S. 65 (a)—*Award, copy of—Original with Ruling Chief.*

If the award is intended to have effect in British India, it cannot be held to have no effect because it was executed in a Native State. If the original award is in the possession of a Ruling Chief, who is not subject to the process of Court, a copy of the original is admissible as secondary evidence. (*Chamer*, C. J. *and Sharfuddin*, J.) BHAJ KISHORE NATH *v.* MUSST. PARSAN KOER. **2 P L W 156= 42 I.C. 617=1917 Pat. 241.**

——Ss. 65 (a) and 66—*Redemption suit—Oral evidence to prove mortgage-deed, if admissible.*

Oral evidence under Ss. 65 and 66 taken together, is admissible to prove a mortgage-deed in redemption suit where the deed is in the possession of the mortgagee and is not forthcoming. (*Parlett*, J.) MI AMIN NISSA *v.* MI SURA BI. **31 I C. 892=9 Bur. L.T. 52.**

——Ss. 65 (a) and 66—*Notice.*

The lower appellate Court admitted oral evidence of a previous promissory note for which the promissory note in suit, was executed on the ground that the original note was destroyed. The facts on the record showed that the old note was returned to the debtor when the new one was executed. Secondary evidence of the contents of the previous note would be admissible only if notice to produce were first served on the defts. The secondary evidence of the previous note was not admissible, as no notice was served. (*Twomey*, J.) MAUNG SAN HLA *v.* SUBRAMANIAM CHETTY.

12 I C. 861=4 Bur. L T. 144

——S 65 (b)—*Secondary evidence—Loss of original—Proof of—Registration copy—Alternative pleas.*

When the original document is not proved to have been lost, no secondary evidence thereof (including a registration copy) is admissible. The statement of a witness that he heard of the loss from the plff.'s predecessor in title many years ago, is admissible in evidence. The defts. being strangers to the deed can put the plff. to proof of the loss and alternatively to plead discharge. (*Griffin and Chamier*, JJ.) SRI RAM *v.* RAM LAL. **18 I.C. 878=11 A.L J. 255.**

——S. 65 (b)—*Non-production of document—Admission as to sale in vendee's favour.*

A person to whom property has been sold by a registered deed cannot, when that deed is not produced, lead any evidence of the sale to prove his title without laying a foundation for the admission of secondary evidence with respect to it. An admission by a vendor as to sale of immoveable property in favour of vendee is not admissible as secondary evidence in the absence of conditions mentioned in cl. (*b*) of S. 65 of the Evidence Act. (*Sharfudain and Coxe*, JJ.) SAFAR ALI *v.* MOHESH LAL.

34 I.C. 956=28 C L J. 122.

——S. 65 (b)—*Scope of—Document as secondary evidence.*

A document cannot be treated as secondary evidence under S. 65 (*b*) of the Act, unless it has been made by the person against whom it is proved or by his representative-in-interest. (*Piggott*, J.C. *and Lindsay*, A.J.C.) GAJARAJ SINGH *v.* MAHOMED BAKER ALI KHAN.

20 I.C. 62

——Ss. 65 (c), 76 and 79—*Secondary evidence—Compromise petition—Presumption of stamp.*

Where the original of a compromise petition filed in Court has been destroyed and a duly stamped copy issued by the Court is produced as secondary evidence, the original must be presumed to have been duly stamped. Moreover the compromise petition is admissible as the evidence of an oral mortgage recited therein, although the petition is not stamped as a mortgage. (*Mr. Ameer Ali.*) AHMED RAZA *v.* ABID HUSSAIN

18 Bom. L R. 904=14 A L J 1099= 20 M L.T. 447=24 C L J 101= (1916) 2 M W N. 548=21 C W N 265= 5 L.W. 153=1 P L W. 90=39 I C 11= 43 I.A. 261=38 All. 494 (P.C.).

——S. 65 (c)—*Will in possession of the opposite party.*

Where the will was either lost or stolen or was in the possession of the opponent, the Registration office copy is admissible in evidence. (*Mr. Ameer Ali.*) PADMAN *v* HANUMANTA. **19 C.W.N. 929=13 A L.J 701= 17 Bom. L.R 609=2 L W 653= (1915 M W.N. 500=22 C L J. 172= 110 P.W R. 1915=29 M L J 307= 18 M L T 54=93 P R 1915= 29 I C. 801=11 P L R. 1916 (P.C.).**

——S. 65 (c)—*Secondary evidence.*

Strict proof of the loss of the document is necessary before allowing secondary evidence. (*Richards*, C J. *and Rafique*, J.) JASPAT RAI *v.* DEVI DAYAL. **32 I.C. 399.**

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———S. 65 (c)—*Execution of deed admitted but denied subsequently—Secondary evidence.*

Subsequent denial of execution alters the effect of the original pleading and the plff. cannot succeed on the secondary evidence without proving the loss of original (*Rafique*, J.) MUHAMMAD ALTAF ALI KHAN *v.* HAMIDUDDIN. **21 I.C. 81=11 A.L.J. 731.**

———S. 65 (c)—*Suit on a copy of mortgage-bond—Part payment pleaded.*

Where the execution of a mortgage-bond is admitted but discharge is pleaded, a suit on a copy of the mortgage-bond is maintainable without proving the loss of the original. (*Rafique*, J.) MULLU *v.* DEOKARAN. **20 I.C. 955=11 A.L.J 734.**

———S. 65 (c) — *Objection to secondary evidence—Objection on appeal.*

Secondary evidence of a document should not be rejected on appeal merely on the contention that the loss of the original has not been satisfactorily proved. 19 C. 438; 19 I.A. 79, Foll. (*Chamier and Piggott*, JJ.) THE COLLECTOR OF FARUKWABAD *v.* GAJARAJ SINGH. **15 I C. 625.**

———S. 65 (c)—*Kabuliyat—Original not found—Secondary evidence.*

Where after search an original kabuliyat is not found, its copy is admissible in evidence. (*Greaves and Panton*, JJ.) JIBAN KALI MUKHERJI *v.* MANIMALA DASI. **49 I.C. 1006.**

———S. 65 (c)—*Document called for but not produced—Court bound to receive secondary evidence.*

All reasonable steps to produce the documents evidencing their title as patnidars having been taken, the defts. were entitled to prove the contents of the lease by secondary evidence and the Court below were held to have erred in rejecting such evidence. (*Fletcher and Walmsley*, JJ.) ATAL BEHARY KEORA *v.* LAL MOHAN SINGHA ROY. **43 I.C. 507.**

———S. 65 (c)—*Recitals in document—Lost grant—Translation—Copy of.*

As Ss. 65 and 91 make it clear that when a written grant is lost, secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure to the report of public officer, is not admissible as secondary evidence of the contents of the grant under any of the Ss. 65, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL. **35 I.C. 201=4 L.W. 331.**

———S. 65 (c)—*Requirements of the section.*

Under S. 65 (c) of the Evidence Act, the question is not so much, whether the exact mode and time of loss of the original is proved but whether the secondary evidence, is offered owing to the inability to produce the original for reasons other than the default, or neglect of the party offering it. (*Spencer and Tyabji*, JJ.) MANAVIKRAMAN *v.* NILAMBUR THACHARAKAVIL. **31 I.C. 579.**

———Ss. 65 (c) and 90—*Presumption if applies to certified copy—Secondary evidence—Original not found.*

Secondary evidence is admissible to prove the contents of a document the original of which is not possible to be produced with all due diligence and the Court is entitled to raise a presumption under S. 90 regarding the same on the production of a certified copy. (*Lindsay*, J.C.) RAJ BAHADUR LAL *v.* BINDESHRI. **46 I.C. 344=5 O.L.J. 219.**

———S. 65 (c)—*Loss of document—Secondary evidence—Court of first instance.*

The question whether or not sufficient proof of search for and loss of original document has been given to lay the foundation for the admission of secondary evidence, is a point to be decided by the Judge of first instance. (*Maung Kin*, J.) MA PAIK *v.* MA NIVA PAUK. **34 I.C. 153=9 Bur. L.T. 174.**

———S. 65 (c)—*Destruction or loss of document—Secondary evidence of mortgage—Burden of proof.*

When the terms of a transaction have been reduced to writing, oral accounts of it are excluded entirely. But when oral evidence has to be depended upon, as for instance, when the document has been destroyed by fire, or lost in some other way, the testimony of a person who has actually read the document at some time or other is to be preferred to that of a witness who was simply present at the time when the transaction was entered into but who has not read the document. (*Mc Coll*, A.J.C.) NGA KYIN YA *v.* MI TOK. **14 I.C 818=5 Bur. L.T. 32.**

———Ss. 65 (e) and 74—*Secondary evidence—Returns in the custody of Registrar of Joint Stock Companies, if admissible.*

Secondary evidence of returns filed with the Registrar of Joint Stock Companies is admissible as such returns constitute the public records of private documents within S. 74 (2) of the Evidence Act. (*Sanderson*, C.J., *Chitty*, *Woodroffe*, *Fletcher and Mookerjee*, JJ.) *In the matter of* AMRITA BAZAR PATRIKA. **45 Cal. 169=21 C.W.N. 1161=19 Cr. L.J. 530=43 I.C. 338=26 C.L.J. 459 (F.B.).**

———Ss. 65 (e), 66 and 74—*Letter of Admn. with copy of will annexed, if public document—Certified copy—No steps taken to call for production of original.*

The certified copy of an order of the Probate Court to the effect that, the Letters of Admn. granted to the person named, with a copy of the will annexed, of the deceased testator, is admissible, the latter being a public document within S. 74 of the Evidence Act. Where it appeared that the original letters were in the

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possession of the parties interested in opposing the plff.'s claim but the plffs. did not take steps to call upon them, to produce them. *Held*, that there being no question of the genuineness of the document, these steps should have been waived by the Court and the document admitted in evidence under S. 66. (*Mookerjee and Roe*, JJ.) HARIRAM DAS *v.* HEM NATH SARMA. **30 I C. 690 = 19 C.W.N. 1068.**

——S. 65 (e)—*Secondary evidence.*

When a public document is destroyed or lost, any secondary evidence is admissible. (*Chatterjee and Beachcroft*, JJ.) ANAND KUMAR *v.* SECRETARY OF STATE. **43 Cal 973 = 32 I C. 774 = 20 C.W.N. 576.**

——S. 65 (e)—*Document in possession but not produced — Acknowledgment in plaint—Plaint not produced—Proof by production of judgment in suit.*

Where an acknowledgment is contained in a plaint but the plaint is not produced the same can be proved by means of a certified copy of a judgment in the suit. (*Shah Din*, J.) HARI CHAND *v.* PHIRAYA RAM. **82 P W R. 1911 = 11 I.C. 877 = 180 P L R. 1911.**

——S. 65 (f)—*Registration office copy of sale-deed—When admissible.*

A registration office copy of a sale-deed is inadmissible in evidence under S. 65 (*f*) of the Evidence Act to prove the contents of the original sale-deed. But such a copy will be admissible in evidence if a case is made out for reception of secondary evidence. (*Chamier*, J.) MUNNAN *v.* NAJMUN. **11 I.C. 50.**

——S. 65 (g)—*Evidence as to result of record—Duty of Court.*

A Kanungo is not required to give oral evidence of the contents of a document such as the record of a *muafi* enquiry which ought to be examined in the original by the Court itself. S. 65, cl. (*g*) does not authorise such a course. (*Maynard*, F.C.) GILAND SHAH *v.* MUSSAM. MAT HASAN. **2 Lah. L J. 714.**

——S. 66—*Secondary evidence—Mortgage deed—Notice to produce.*

In a redemption suit plffs. alleged in the plaint that the original mortgage-deed was with the defts. and asked the Court to have the deed summoned from defts. The defts. denied in their statement the existence of the alleged deed. *Held*, that the plffs. could give secondary evidence of the deed and that under the circumstances of the case the Court might in the exercise of the discretion given by S. 66, dispense with the issue of a notice to produce. (*Lindsay*, J.C.) BAHADUR SINGH *v.* MADHO SINGH. **26 I.C. 695 = 3 O.L.J. 879.**

——S. 67—*Proof of document.*

The execution of a document should ordinarily be proved (where the executant denies that he wrote it) by calling some one who saw him write or who knows his handwriting or by

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a comparison of his signature with his signature on other documents written by him. (*Chatterjee and Panton*, JJ.) DHAR AND COMPANY *v.* SIB NARAYAN SINGH. **59 I.C. 188.**

——S. 67—*Mode of proof not prescribed.*

S. 67 does not require any particular kind of proof to establish execution of a document. (*Mitra*, O.A.J.C.) Mt. LAHINI *v.* BALA. **18 N.L.R. 85 = 1922 Nag. 227.**

——S. 67—*Document which needs no attestation.*

Where a document is admissible without attestation, some evidence of its execution by the executant should be given, *e.g.*, he signed it or made his thumb impression or any other mark. (*Lindsay* J.C.) BANKE LAL *v.* SWAMI DAYAL. **7 O.L.J. 207 = 2 U.P.L.R. (J.C.) 82 = 56 I.C. 32 = 23 O.C. 72.**

——S. 67—*Execution of document—Proof—Registration endorsement—Value of.*

The registration endorsement is no conclusive proof of the fact of execution of a document and the Court must be satisfied that the mark or signature denoting execution was actually fixed to the document by the person professing to have executed it. (*Lindsay* J.C.) JAGANNATH *v.* DHIRAJA. **46 I C. 279 = 5 O L.J. 191.**

——S. 68.

See also (1) ATTESTATION.
(2) T.P. ACT, SS. 58 AND 123.
ADMISSION OF EXECUTION.
ATTESTATION BY SCRIBE.
ATTESTATION, EXECUTION BY PARDANASHIN LADY.
"ATTESTATION," MEANING OF.
ATTESTATION, PROOF OF.
DEATH OF ATTESTING WITNESSES.
MISCELLANEOUS.

Admission of Execution.

——Ss. 68 and 70—*Admission of execution—Denial of proper attestation—Procedure.*

Where a mortgagor admits having signed the mortgage sought to be enforced but couples it with a denial of the presence of the attestors at the time of signing the mortgagee must prove the execution of the mortgage by calling at least one attesting witness to prove the attestation. The admission, qualified as it was, did not entitle the mortgagee to the benefit of S. 70 of the Evidence Act. No admission of execution is effectual under S. 70 of the Evidence Act unless it amounts to an acknowledgment of the formal validity of the instrument. The execution of a document means something more than the mere signing by the party. It includes delivery and signing in the presence of witnesses where witnesses are necessary. Where the admission of execution is unqualified it may well be an admission of due execution or a waiver of proof of due execution within the

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meaning of S. 70 of the Evidence Act. (*Richardson and Suhrawardy*, JJ.) ARJUN CHANDRA BHADRA *v.* KAILAS CHANDRA DAS. 27 C. W N 263 = 36 C.L J. 378 = 1923 C. 149.

——— **Ss. 68 and 70**—*Admission of execution.*

Proof of execution of a document required to be attested by calling one attesting witness under S. 68 of the Evidence Act is not required under S. 70 where the execution of the document is admitted by the executant. (*Chatterjee and Panton*, JJ.) PAPAN KHAN *v* BADAL SARDAR. 66 I C. 906 = 34 C.L.J. 498.

——— **Ss. 68 and 70**—*Admission of execution by a party.*

Where a document is required by law to be attested, the admission, by a party to it, of its execution dispenses with the necessity of proving its execution as against him, but as against persons other than the party making the admission, the document is inadmissible in evidence until it has been proved by attesting witnesses in the manner prescribed by S. 68 of the Act. (*Newbould*, J, contra.) 7 C.W.N. 384, Dist. (*Woodroffe, Chatterjee and Newbould*, JJ.) SATISH CHANDRA MITRA *v* JOGENDRA NATH. 44 Cal. 843 = 20 C.W.N. 1041 = 34 I C. 862 = 24 C L J 173.

——— **Ss. 68 and 71**—*Admission of execution.*

The existence of an admission of an execution in the registration endorsement, does not relieve the party propounding the document from compliance with S. 68 of the Evidence Act. But the endorsemant is the best available evidence of execution and is admissible under S. 71 of the Evidence Act. Whether such an endorsement by itself is sufficient subject to the provisions of S. 68 to prove execution is a question of fact to be determined on the merits of each case. 9 Bom. L R. 401 ; 33 Cal, 537, Foll. ; 17 Cal. 208, Not Foll. (*Stanyon*, A.J.C.) MT. SARJA *v.* MURALIDAR. 42 I C. 715 = 13 N.L.R. 197.

——— **S. 68**—*Admission of execution—Proof of attestation—Effect of.*

It is open to a party to waive formal proof of a document even when it is required to be proved in a certain way. But although proof of the document may be waived, this does not affect the validity or legal character of the document as a gift or mortgage. (*Miller*, C.J. *and Mullick*, J.) BAIJNATH SINGH *v.* MT. BIRAJ KUER. 2 P 52 = 4 P L.T. 239 = 1922 P. 514.

——— **Ss 68 and 70**—*Admission of execution—Minor parties—Admission by adults—Effect of.*

A mortgage was executed by the manager of a joint Hindu family on his own behalf and on behalf of a minor. The admission of execution by the manager does not relieve the mortgagee of the necessity of calling an attesting witness o prove execution as against the minor and lthough the minor would be liable to discharge

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the debt incurred for a family necessity, yet in the absence of proof of execution as against him, the debt would not create a lien on the property. Per *Atkinson*, J.—Where a party to an attested document admits its execution a third party is not bound by such admission. 20 C.W N. 1044, Foll. An admission under S. 70 of the Evidence Act, is admissible in evidence even though not made in the course of legal proceedings pending before a Court but antecedent to the institution of legal proceedings. 17 Cal. 192 and 38 All. 1, Not Foll. ; 44 C. 345, Foll. (*Roe and Atkinson*, JJ.) NAGESHWAR PRASAD *v.* BACHU SINGH. 53 I C. 79 = 4 P.L J. 511.

——— **S 68**—*Admission of execution—Proof of attestation—If necessary.*

Admission of execution in the written statement is sufficient to dispense with proof of attestation as required by S. 68 of the Evidence Act. (*Jwala Prasad*, J.) RAM GULAM RAUT *v.* HARJAN MEHRA. 42 I C 91 = 3 P.L.W. 269.

Attestation by Scribe.

——— **S. 68**—*Attestation by scribe.*

Ordinarily a scribe or writer of the document is not intended to be and is not, an attesting witness. An attesting witness is one who has seen the deed executed and signs it as a witness. 39 B. 61 ; 33 B. 44 ; 35 M. 607 P C., Ref. (*Macleod*, C.J. *and Heaton* J.) DALICHAND SHIVRAM MARWADI *v* LOTU SAKHARAM. 44 Bom. 405 = 55 I C. 616 = 22 Bom. L.R. 1256.

——— **S. 68**—*Attestation by scribe.*

An attesting witness to a document is a witness in whose presence the document is executed. A scribe by reason of his having signed the name of the executant on the document on his behalf is not a competent attesting witness, (*Chatterjee and Panton*, JJ.) PAPANKHAN *v.* BADAL SARDAR. 66 I C 906 = 34 C.L J. 498.

——— **S. 68**—*Attestation by scribe.*

A person who is present and witnessee the execution of deed and whose name is there on the deed, is a competent witness to prove the execution though he is described as merely a writer. (*Newbould and Panton*, JJ.) JAGANNATH KHAN *v.* BAJRANG DAS. 62 I.C. 87 = 48 Cal. 61.

Attestation—Execution by Pardhanashin Lady.

——— **S. 68**—*Attestation—Execution by pardanashin lady.*

Especially in the case of a pardanashin lady executing a mortgage-deed the attesting witnesses need not actually see the executant sign or make mark If it is shown that a pardanashin lady admitted that she was the executant and the deed was taken behind the *Parda* for her signature and after it was signed by her, the

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signatures of the attesting witnesses who saw her touch the pen were then made there is sufficient proof of attestation. (*Kotwal*, A.J.C.) KASI DANBI *v.* GANGU LAL. **16 I C 247.**

—— —— **S. 63**—*Attestation — Execution by Pardanashin lady.*

Where the witness did not see the executant a pardanashin lady, but saw her signing the deed behind the pardha and where the other witnesses knew her by voice, *held* the deed is properly attested. (*Das and Adami*, JJ) RADHA KISHAN *v.* JAG SAHU. **60 I C. 173 = 3 U.P.L.R. (Pat) 14.**

"Attestation," meaning of.

—— —— **S. 68**—*Attestation, meaning of.*

An attestor must have seen the executant sign the document. Mere acknowledgment by executant before attestor is insufficient. (*Sir John Edge*). PADRATH HALVAI *v.* RAM NARAIN UPADHIA. **37 All. 474 = 42 I.A. 163 = 13 A L J 809 = 19 C.W.N 991 = 17 Bom. L R 6 7 = 18 M L T. 85 = 2 L W. 639 = 29 M.L J 189 = 22 C L J 161 = 30 I.C. 386 = (1915) M.W.N. 709 (P C.).**

——— **S. 68**—*Attestation, meaning of.*

Attestation means the witnessing of actual execution of document and not of mere acknowledgment of execution by executant. The attestor must have seen the executant sign the document. Mere acknowledgment by executant before attestor is insufficient. (*Mr. Ameer Ali*). SHAMU PATTER *v.* ABDUL KADIR ROWTHEN. **35 Mad. 607 = 39 I.A. 218 = 16 C W.N 1009 = 23 M L J. 321 = 12 M.L T. 333 = (1912) M.W N 935 = 10 A.L J 259 = 14 Bom L R 1014 = 16 I C. 250 = 16 C L J 596 P.C).**

[Affirming 31 Mad. 215 = 18 M.L.T. 219.

——— **S. 68**—*Attestation, meaning of.*

If the witnesses attesting a deed never saw the executant actually signing the deed but merely heard her acknowledge the execution, it cannot be regarded as duly attested. (*Lyle*, J.) SUBHEDA KOERI *v.* RAGHU RAM. **21 I C. 83 = 11 A L.J. 757.**

——— **S. 68**—'*Attestation*', '*Execution*,' *meaning of.*

The term 'attested' signifies the acts of witnesses who see the execution. The term '*executed*' signifies the acts required of the person who makes the deed either himself or through a representation. Obviously the same person cannot have both the capacities (*Mookerjee and Buckland*, JJ) SRISTIDHAR GHOSH *v.* RAKSHAKALLY DASI. **63 I.C. 507.**

——— **S. 68**—*Attestation, meaning of—Illiterate executant—Scribe writing executant's name—Scribe not an attesting witness.*

Where document was executed by an illiterate man and the scribe wrote his name as having scribed the deed and also as the actual writer of the executant's signature but did not sign as an attesting witness, it was held that he was not an attesting witness. 8 I.C. 1119, Foll. (*Batten*, A.J.C.) SAROOPCHAND *v.* TULARAM. **13 I.C. 902 = 8 N.L.R. 17.**

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Attestation—Proof of.

——— **S. 68**—*Attestation—Proof of.*

Deposition of a witness that one of the executants had himself written the document and after the executants had signed, the names of the two attesting witnesses were written with their permission by the executant who had written the document, is sufficient to prove that the document had been duly executed and attested where the attesting witnesses are dead or deny or are illiterate and do not remember the attestation. (*Tudball and Rafique*, JJ.) JAYBEHARI LAL *v.* SAHU PERSHADI LAL. **19 I.C. 789 = 11 A L J. 400.**

——— **S. 68**—*Attestation—Proof of—Attesting witnesses dead—Identification of their signature.*

Where the executants of a document are marksmen and the attesting witnesses are dead, presumptive or other evidence of execution is not admissible if the provisions of the section for proving the attestation of one witness and the signature of the executant are not complied with. A deed with marks of executants and signature of attestor is not proved by merely identifying the handwriting of the latter. (*Griffin and Chamier* JJ.) GOVARDHAN DAS *v.* HORI LAL. **35 All. 364 = 19 I C. 121 = 11 A L J. 379.**

——— **S. 68**—*Attestation—Proof of—Attesting witnesses—Examination—Presumption.*

In the absence or death of witnesses *prima facie*, the presumption is that the testator signed in the joint presence of the two persons and that they subscribed in his presence. Where there was the affirmative testimony of one attesting witness that he was present, saw the execution and became an attesting witness, the testimony of another witness that at the request of the mortgagor, he became an attesting witness, and the further fact that, on the same day, when the document was later on presented for registration, this second witness identified the executant, who in his presence, admitted execution before the registering officer, and at that time the signature of these witnesses appeared as those of attesting witnesses on the face of the document presented for registration. *Held*, in these circumstances, the Court legitimately drew the inference that the requirements of the law were fulfilled. (*Mookerjee and Rankin*, JJ) BENOY BHUSHAN ROY *v* DHIRENDRA NATH DEY. **74 I C. 178 = 38 C.L J. 114.**

——— **Ss. 68 and 70**—*Attestation—Proof of—Collateral purpose.*

S. 68 of the Evidence Act is imperative and does not on the face of it admit of any relaxa-

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tion except in the cases provided in Ss. 69, 70 and 71 of the same Act. This rule is also applicable whether the document required by law to be attested is sued on or is tendered in evidence for a collateral purpose. (*Suhrawardy and Cuming*, JJ.) SUDHANYA KUMAR SINGHA v. GOUR CHANDRA PAL
35 C.L.J. 473=27 C.W.N. 134=
1922 Cal. 160.

——S. 68—*Attestation, proof of — Oral evidence.*

Where an attestor denies having witnessed the execution of a document, it is open to the parties to let in other oral evidence to show that the attestor did as a matter of fact see the execution and was an attesting witness. (*N. R. Chatterjee and Panton*, JJ.) SREEMUTY SASHIMUKHI DASI v. MON MOHINI DASI.
67 I.C. 87.

——Ss. 68 and 70—*Attestation, proof of—Admission by executant—Proof as against third parties.*

Admission of execution of an attested document by the executant or by a person representing his interest is sufficient proof of its execution against the person making such admission. As against the other parties the document must be proved in accordance with S. 68 of the Evidence Act. (*N. R. Chatterjee and Richardson*, JJ.) NIBARAN CHANDRA SEN v. NAGENDRA CHENDRA SEN.
44 I.C. 984=22 C.W.N. 444.

——S. 68—*Attestation, proof of—Mortgage—Attesting witnesses.*

To prove due execution of a mortgage it is sufficient if one of the attesting witnesses proves its execution as also attestation by himself and some of the other attesting witnesses who are dead. Under S. 68 of the Evidence Act it is not necessary to call two attesting witnesses to prove execution. (*Mookerjee and Beachcroft*, JJ.) TULSI MAHATO v. CHETHREE LAL ROY.
16 I.C. 373=18 C.L.J. 43.

——S 68—*Attestation, proof of—Mortgage.*

To prove a mortgage, one of the attestors if alive, must be called and execution must be proved and it must also be proved that the execution was in the presence of two attesting witnesses. If all the witnesses are dead, the law would be satisfied by any evidence showing execution in the presence of two attesting witnesses. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) NAMBERUMAL CHETTY v. RAGHAVA CHARIAR. 71 I C 390 (2)=
14 L W. 863.

——Ss. 68 and 71—*Attestation, proof of—Applicability to charges.*

The special provisions of the Transfer of Property Act relating to the attestation of mortgages and of the Evidence Act relating to the method of proof of mortgages have no application to charges. (*Wallis*, C.J. *and Oldfield*, J.) RAMASAMI v KUPPUSAMI
14 L.W. 99=66 I C 854 (2)=
(1922) M.W.N. 472.

——S. 68—*Attestation, proof of—Evidence of one of the attesting witnesses.*

To prove the creation of a valid charge by a mortgage deed the evidence of one of the attesting witnesses, is sufficient to prove the execution of the mortgage; but this proof may be rebutted by the proof on the other side that the other witness or witnesses did not really see its execution. (*Sadasiva Aiyar and Spencer*, JJ.) VENKATA REDDI v. MUTHU PAMBULU NAIK. 60 I C 864=
39 M.L.J 463.

——Ss. 68 and 69 — *Attestation, proof of.*

It is not necessary that two attesting witnesses should be called when two are alive nor that even assuming that only one need be called he should at least be made to prove that another attesting witness besides himself saw the execution. 39 A. 109; 39 A. 241, Foll. (*Sadasiva Iyer and Spencer*, JJ.) VENKATA REDDI v. MUTHU PAMBULU NAIK.
(1920) M.W.N. 812=58 I C 801=
28 M L T 213.

——S. 68—*Attestation, proof of—One of the two witnesses not called, no presumption against mortgagee.*

The production of one attesting witness satisfies the requirements of S. 68 of the Evidence Act, and from a mere failure to do more than is required of the mortgagee and to produce both the witnesses even if he knows where the other is, it cannot be inferred that the mortgagee is intentionally keeping back the other and that therefore his evidence would damage the plaintiff's case (*Batten*, J.C. *and Hallifax*, A.J.C.) LACHHMINARAYAN v. MOULVI ZAHIRUL SAID ALVI.
1923 Nag 322.

——Ss. 68 and 90—*Attestation, proof of—Document required to be attested—Signature—Ancient document—Presumption—Rebuttal.*

Mere proof or admission of the genuineness of the signature of the executant of a document does not dispense with the proof of its proper attestation if the document is one required by law to be attested. The facts that a document is more than thirty years old and is registered and the genuineness of the signature of its executant on it, is admitted, may go to raise a presumption as to the genuineness. But such a presumption does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was, therefore, inoperative. (*Stuart and Kanhaiya Lal*, A.J.Cs.) NARAIN SINGH v. DEPUTY COMMISSIONER OF PARTABGARH. 56 I.C 801=
7 O.L.J. 22.

EVIDENCE ACT (I of 1872), S. 68—Attestation, Proof of.

———S. 68—*Attestation, proof of.*

The fate of a document is not necessarily at the mercy of attestors and the Court can hold attestation proved though the attestors repudiate their signature or say they attested in the absence of the executant. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MAHARAJ LAL BIHARI *v.* ANJUMAN-UN-NISA. **48 I C 538= 5 O L J 667.**

———Ss. 68 and 71—*Attestation, proof of—Document.*

If a mortgagor does not execute the mortgage deed in the presence of attesting witnesses, proper attestation as required by S. 59 of the T.P. Act cannot be presumed. In such a case the evidence of some other person cannot prove the due attestation required by law under S. 71, Evidence Act. 35 M. 607, Ref. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) MAHDEO PRASAD *v.* GAJRAJ SINGH. **34 I C. 887= 3 O L J. 164.**

———S. 68—*Attestation, proof of—Search for witness how made.*

The enquiry for an attesting witness must be strict, diligent, honest, and satisfactory. It should be made at the residence of the witness and of the relatives who may have information Where, an attesting witness is out of the jurisdiction of the Court, however, the document can be proved by other evidence. (*Maung Kin and Rigg*, JJ.) ASOOMEAH *v.* V.S R.M. CHETTY. **61 I C 637= 13 Bur. L T. 114.**

Death of Attesting Witness.

———S. 68—*Death of attesting witnesses.*

Where all the attesting witnesses to a mortgage-deed are dead and the signature of one of the attesting witnesses is proved to be in the handwriting of the witness and the signature of the mortgagor is proved to be his, the mortgage-deed is sufficiently proved in the absence of contrary evidence. 15 A.L.J. 167, Foll. (*Richards*, C.J. *and Piggott*, J.) SHIB DAYAL *v.* SHEO GULAM. **39 All. 241=38 I C 694= 16 A.L.J. 164.**

———Ss. 68 and 69—*Death of attesting witnesses.*

When the attestation of the witnesses is proved to be in their handwriting in cases the attesting witnesses are dead, and the signature of the executant of the mortgage-deed is in his handwriting, a presumption of the due execution of the deed arises, which the other side must rebut. (*Richards*, C.J. *and Rafique*, J.) UTTAM SINGH *v.* HUKAM SINGH.
39 All. 112=38 I C. 651=16 A.L.J. 167.

———S. 68—*Death of attesting witnesses.*

The names of two out of the four attesting witnesses to a mortgage, were written by the scribe who also signed the document himself. *Held*, that it being necessary to prove the deed of mortgage after the death of all the attesting witnesses and the scribe, it was sufficient to prove the handwriting of the scribe. 20 A. 532 Ref. (*Piggott and Rafique*, JJ.) KRISHNA JEWA TEWARI *v.* BISHANATH KALWAR.
34 All 615=16 I C. 392=10 A.L.J. 217.

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———S. 68—*Death of attesting witness Mortgage document—Proof.*

Where in a suit on a mortgage document, two out of the three attesting witnesses were dead and the plff. proved the signature and an attestation of one of the dead attestors, and called as a witness the living attestor who gave clear evidence of attestation in chief examination but in cross-examination being got at by the defendant went back upon what he said. *Held*, that the document was duly proved. *Obiter.*—To prove a mortgage document it is not enough to call one attesting witness to speak to the execution of the document only by the executants. It must also be proved that the document was attested, by a second witness. (*Wallis*, C J. *and Krishnan*, J.) GANGAYYA *v.* SUBHAMMA. **14 L W, 344= (1921) M.W.N. 747=69 I.C. 284= 4 M L J 303.**

———S. 68—*Death of attesting witnesses—Failure of mortgagor to produce—Execution of mortgage.*

The attesting witnesses of a mortgage deed were dead. It was proved that the mortgagor had executed it and that it had been returned to him when a sale-deed was executed. But he failed to produce it though called upon. In the above circumstances the execution of the mortgage-deed was established in view of S. 89 irrespective of the provisions of S. 58. (*Lindsay*, J C.) JANG BAHADUR SINGH *v* CHANDRAJ SINGH. **41 I.C. 171=4 O.L.J. 365.**

Miscellaneous.

———S. 63—*Mortgage—Attestor called out but not examined—Document admissible independently—Collateral purpose.*

When the provisions of S. 68, Evidence Act are not complied with, a document cannot be used as evidence at all as a document either requiring attestation or in fact attested; but this does not prevent it from being used in evidence as something else or for any other purpose. S 68 is subject to the limitation, *viz.*, that if the document were tendered in some other proceeding for the purpose of proving the handwriting of the scribe, it could not be objected to upon the ground that no attesting witness being called to prove it, it could not be used in evidence at all. The word "called", in S. 68 means tendered for the purpose of giving evidence. (*Piggott and Walsh*, JJ.) MOTI CHAND *v.* LALTA PRASAD.
44 I.C. 596=16 A.L.J. 121.

———Ss. 68 and 69—*Object of sections.*

If the provisions of the sections as to proof of document which by law has required to be attested were complied with, the document must be considered proved, in the absence of

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evidence to the contrary. The law does not require that some witness must prove that document was signed in the presence of witnesses. (*Richards*, C J. *and Banerjee* J.) RAM DEI *v.* MUNNA LAL 39 All. 109 = 38 I.C. 175 = 14 A.L.J 1041.

——S. 68—*Mahomedan law — Deed of gift.*

A deed of gift by a Mahomedan can be admitted in evidence though it does not satisfy S. 68. (*Richards*, C.J. *and Rafique*, J.) KARAM ILAHI *v.* SHARFUDDIN 38 All 212 = 35 I C. 14 = 14 A L J. 119.

——Ss. 68 and 72—*Mortgage — Invalid attestation—Personal liability.*

An invalid attestation of a mortgage though it prevents the deed from being enforced as a mortgage, does not render it inadmissible in evidence as a simple bond. (*Benerjee*, J.) MATHRA PERSHAD *v.* CHEDDI LAL. 29 I C 303 = 13 A.L J. 553.

——Ss. 68 and 71—*Attestor denying execution.*

A document can be proved by other evidence if the only living attesting witness who is illiterate, denies its execution. (*Richards*, C.J. *and Banerji*, J.) BADRI PRASAD *v.* CAMBIR KANWAR. 26 I.C 503.

——S. 68—*Attestor alive but unable to testify.*

S. 68 requires at least one attesting witness to be called to prove the execution of a document even though he may not be able to prove the document or may have forgotten everything about it or may deny its execution altogether. In order to prove a document to have been signed by a witness or to have been in his handwriting, it should be shown to him and he should be questioned directly upon that point. A marksman is an attesting witness within the meaning of S 59 of the Transfer of Property Act and S. 68 of the Evidence Act. (*Sundar Lal*, J.) CHIRANJI LAL *v.* POORNA. 26 I.C 84 = 12 A L.J. 1114.

——S. 68—*Scribe, evidence of—Proof—Document—Attesting witness.*

The evidence of the scribe of a mortgage deed who signed the deed in the usual way without attesting it as a witness, is not sufficient to prove the deed. An attesting witness is a witness who has seen the deed executed and has subscribed it as a witness. (*Griffin and Chamier*, JJ.) BADRI PRASAD *v.* ABDUL KARIM. 36 All. 251 = 19 I.C. 451 = 11 A L J. 260.

——S. 68—*'Attesting witness,' meaning of.*

'Attesting witness' in S 68 of the Evidence Act means the same thing as 'attesting witness' in T.P. Act, S. 59, when the question is as to the proof of a mortgage. (*Newbould and Panton*, JJ.) JAGANNATH KHAN *v.* RAJRANG DAS. 62 I.C. 97 = 48 Cal. 61.

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——S. 68—*Attesting witnesses—Necessity for calling all.*

Although, where an instrument requiring attestation is subscribed by several witnesses, it is generally sufficient to call only one of them. In the case of wills, however, it is desirable that all capable of being called, should be examined to remove all suspicion of fraud. (*Mookerjee*, C.J. *and Fletcher*, J.) SURENDRA KRISHNA MONDAL *v.* RANI DASI 47 Cal. 1043 = 33 C.L J. 34 = 9 I.C. 814 = 24 C.W.N. 860.

——S. 68—*Proof of Execution.*

Where the handwriting of the witnesses in a will was identified, held this does not prove execution by the testator. (*Broadway and Campbell*, JJ.) KAHAN CHAND *v.* MT. JAWANDI. 1923 Lah. 174.

——S. 68—*T. P, Act (IV of 1882) S 59—Civil Procedure Code (V of 1908), O. 8, R. 5.*

A document creating charge on immoveable property and attested by two witnesses can be proved under S. 68 of the Evidence Act by one attesting witness only, if alive; but the proof can be rebutted by an opponent if he succeeded in proving that the other, though dead, did not really see its execution. S. 59 of the T. P. Act dealing with the validity of a document cannot be interpreted to provide the mode of proof of execution in derogation of the requirements of the Evidence Act. An appellate Court must call for clearer proof of attestation of a document if required as per discretion left to it under S. 58 proviso of Evidence Act and R. 5 of O. 8, of the C.P. Code; and should not decide without such proof that the document has not been proved when the piff. does not examine all the attesting witnesses. (*Sadasiva Iyer and Spencer*, JJ.) VENKATA REDDI *v.* MUTHU PANBULU. (1920 M W.N 512 = 58 I.C. 801 = 28 M L.T. 213.

——Ss. 63 and 71—*Attestation—Validity of—When does not arise.*

Ss. 68 and 71 of the Evidence Act deal with the manner in which execution may be proved by witnesses and have no bearing on the question whether the attestation was according to law. If a document on the face of it purports to have been attested by attesting witnesses, and it is not denied that they were attesting witnesses, the question of valid attestation does not arise or if it be considered to arise, the maxim "*Omnia praesumuntur rite esse acta*" comes in. (*Batten*, A.J.C.). BALKISHORE *v.* NARAINSHA. 42 I.C. 299 = 13 N.L.R. 121.

——Ss. 68 and 90—*Execution of deed—Direct evidence available — Presumption under S. 90 cannot be invoked.*

Where direct evidence of the execution o a deed is available and would satisfy the requirements of S. 68 of the Evidence Act,

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the presumption under S 90 cannot be invoked. (*Wazir Khan*, A.J.C.) RAGHUBAR SINGH *v.* SANWAL SINGH. **8 O L.J. 23 = 61 I.C. 125 = 3 U.P.L.R. (J.C.) 9.**

——S. 68—*Attestor not admitting his co-attestor to have signed the deed.*

It is enough if one attesting witness proves execution and attestation, after seeing executant sign, though he does not say whether he saw the other attesting witnesses sign it. (*Daniels*, A.J.C.) KASHEO *v.* SITLU. **39 I.C. 274 = 4 O.L J. 65.**

——S. 68—*Evidence of—Attesting witnesses.*

It is not necessary under S. 68 to examine the attesting witnesses as a sale-deed is not a document which requires attestation. (*Evans*, A.J.C.) GOPAL *v.* BISHUNNATH. **10 I.C. 64.**

——S. 68—*Attesting witnesses not called—Effect of—Attestation by mortgagor.*

S. 68 of the Act is imperative and a document is not admissible in evidence, unless proved by attesting witness, so long as one is alive and subject to the process of the Court and the fact that when he is called, he will be hostile is no excuse. A mortgagor is not bound by the recitals in a mortgage bond merely because he has attested it. (*Coutts and Macpherson*, JJ.) DHIRA SINGH *v.* MOTILAL. **63 I.C. 266 = 2 P.L T. 614.**

——S. 68—*Attestor alive but apprehended to be hostile.*

So long as there is a witness and subject to the process of the Court, no document which is required by law to be attested shall be used in evidence until one such witness has been called. The fact that when called, he will prove hostile, does not absolve the plff. from doing his duty. The section is imperative. (*Roe and Jwala Prasad*, JJ.) TULASINGH *v.* GOPALSINGH **1 P.L J. 369 = 38 I C. 601 = 2 P L W. 333.**

——S. 69—*Document "legally proved"—Appellate Court, whether should interfere.*

When a Court of First Instance comes to a finding as to a document having been "legally proved", an Appellate Court should be very slow to interfere with the finding especially when no objection has been taken to its admissibility at the time of hearing. (*Abdur Rahim and Ayling*, JJ.) MANCHUKONDA APPADU *v.* ATCHI APPALASWAMI. **32 I.C. 760.**

——S. 69—*Signature—Proof of.*

The section requires proof of the signature of the executant. This may be proved indirectly by a contemporaneous admission of the execution made by the executant or by other relevant facts such as his subsequent conduct just as well as by the evidence of a witness who directly swears to his signature. An admission recorded by a Sub-Registrar in his registration

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endorsement can be accepted in evidence. (*Kendall and Daniels*, A.J.Cs.) AJUDHIYA PRASAD *v.* JAGANNATH BAKHSH SINGH. **38 I.C. 605 = 20 O.C. 18.**

——S. 69—*Document not enforceable as a mortgage—Collateral purpose.*

A document though not enforceable as mortgage may be used for a collateral purpose unconnected with the mortgage, *viz.*, to prove the ratification of leases. 9 C. 520; 26 C. 78; 32 M. 410, Ref. (*Stuart and Kanhaiya Lal*, A.J Cs.) HUSSAIN ALI MIZA *v.* MUHAMMAD AZIM KHAN. **31 I.C 728 = 18 O.C. 163.**

——Ss. 69, 67 and 68—*Proof of mortgage-deed—Attesting witnesses, absence of, not accounted for—Procedure.*

Proof of execution of a mortgage-deed can be had only from the attesting witnesses; and until the absence of such witnesses has been satisfactorily accounted for, evidence could not be admitted to prove their signatures, and through that, the deed. (*Chamier*, J.C. *and Lindsay*, A.J.C.) SWAMIDIN SINGH *v.* KANIZ FATIMA. **11 I.C. 225.**

——S. 70—*Admissian of execution—No formal proof necessary.*

Where the execution of documents is admitted in the pleadings no formal proof by calling attesting witnesses is necessary. (*Walsh and Wallace*, JJ.) ASHARFI LAL *v* NANHI. **44 A. 127 = 19 A L J 855 = 1922 All. 153.**

——S 70—*Admission of execution—Statement before registering officer—Proof of execution and attestation—Suit on mortgage.*

The admission referred to in S. 70 of the Evidence Act is an admission in the course of the suit itself, for example made in the pleadings or by a party himself in his examination. The certificate endorsed by a Registering Officer upon a document which requires registration is evidence that all the provisions of the Registration Act have been duly performed, and is no evidence of admission, of execution made by the executant. (*Richards*, C.J. *and Piggott*, J.) RAJ MANGAL MISAR *v* MATHURA DUBAIN. **38 All. 1 = 30 I.C 516 = 13 A.L.J. 881.**

——S. 70—*Admission by one out of three executants—Insufficient.*

An admission in a later deed by one out of three parties to a document, is insufficient to prove execution. (*Griffin and Chamier*, JJ.) GOBARDHAN DAS *v.* HORI LAL **35 All 364 = 19 I.C. 121 = 11 A.L J. 379.**

——Ss 70 and 69—*Admission in pleadings—Execution if includes attestation.*

A mortgage could not be held to be invalid for absence of proof of attestation where there is nothing in the pleadings to show that the plaintiff was put to the proof of attestation. 44 B. 405, Ref. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as

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against him, though it be document required by law to be attested. Per *Crump*, J —The word "execution" in S. 70 of the Evidence Act means that the party by affixing his signature or mark has signified his assent to the contents of the document, and if a party admits that he has done this, he admits execution. The admission of execution cannot be taken to mean admission not only of the signature or mark in token of assent by him, but also that all the legal formalities connected with the document have been complied with. There is no reason for holding that where a party admits execution within the meaning of S. 70 he must necessarily be taken to admit that the document has been attested as required by S. 59 of the T.P. Act. (*Shah*, A.C J. *and Crump*, J.) JAGANATH NARSINGDAS *v.* RAVJI TULSIRAM. **24 Bom. L.R. 1296=47 B 1057=1298 Bom. 90.**

——S. 70—*Admission of mortgage—Proof of attestation—Legal representatives.*

Section 70 provides that the admission of a party to an attested document, of its execution, by himself, shall be sufficient proof of its execution as against him, though it be a document required by law to be attested. The section speaks of an admission by a party to an attested document of its execution by himself; that is, of its execution by the party concerned. An admission by the representative of a party to an attested document of its execution by the party cannot be treated as an admission of the party to an attested document of its execution by himself. Where a person admitted execution of the mortgage but specifically denied that the bond had been duly attested as required by law, in such circumstances it is incumbent upon the party who relies upon the mortgage instrument, to establish that the document was attested as required by law. (*Mookerjee and Rankin*, JJ.) BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. **74 I.C. 178=38 C.L J. 114.**

——S. 70—*Admission of execution—Effect*

Per *Woodroffe and Chatterjee*, JJ.—Per *Newbould*, J., *contra*.—S. 70 must be read as a proviso to S. 68. S. 68 must be read subject to the provision of the subsequent sections; where an executant admits execution of an attested document, the document is admissible as against persons other than the executant without proof by an attestor but such admission will not prove the document as against other persons. (*Woodroffe, Chatterjee and Newbould*, JJ.) SATISH CHANDRA MITTRA *v.* JOGENDRA NATH. **44 Cal. 348=20 C.W N 1044=34 I.C. 862=24 C L J. 175.**

——S. 70—*Admission of execution—Effect against co-executants—Attestation.*

Where there are two executants in a mortgage-deed, attestation may be according to law in respect of one of them but not in respect of the other. Where execution is admitted and due attestation not denied the question of attestation does not arise, if it does arise, the

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maxim *omina praesumuntur rite esse acta* comes in, unless there is evidence that attestation is not according to law. 42 I C. 299, Foll. (*Batten*, A. J. C.) DHANNA LAL *v.* SHAMBU. **41 I C. 9.**

——Ss 70 and 71—*Admission of execution, what is—What interest passes.*

The admission referred to in S. 70, Evidence Act, is an admission made in the course of the proceedings in which the document is produced. (*Stanyon*, A.J.C.) SARJA *v.* MURALIDHAR. **42 I.C. 715=13 N.L R. 197.**

——S. 70—"*Admission of execution*", *meaning of.*

Admission in S. 70 of the Act related only to the admissions of the parties in the course of the trial of a suit. An admission of execution before a registering officer at the time of registration does not come within the purview of the section. 27 C. 190, Foll.; 1 C.W.N. ccxxii, not Foll. (*Drake Brockman*, J. C.) BUDDA *v.* SARWAN. **11 I C 689=7 N L R. 83.**

——S 70—*Admission of execution, what is.*

The admission referred to in S. 70 only refers to admissions made in the course of the trial. Any admission which can be availed of under S. 70 is only against the party himself. If a party has to prove a document he must prove its execution in all cases, *i.e.*, that it was signed by the executant irrespective of the question as to whether it requires to be attested or not. (*Lindsay*, J.C.) HARI LAL *v.* THAKUR BHAGWAN BAKHSH. **34 I.C. 281=19 O C. 23.**

——S. 70—*Document required by law to be attested—Admission of execution—Proof of attestation.*

Admission by a party of execution of a document is sufficient proof, even though law requires it to be attested. If the admission of the executant has not the effect of dispensing with proof of attestation, S. 70 would be superfluous as recourse may be had to the general provisions of the Act relating to admissions, if the admission of execution is to be used only in the sense of an admission of signing only. The executant's admission may be made prior to the institution of legal proceedings. (*Duckworth*, J.) AUNG RHI *v.* MA AUNG KRWA PRU. **1 Rang 557=1924 Rang. 139.**

——S. 71—*Attestation denied—What is to be proved.*

Where an attestor denies attestation and the other attestors are dead, what is required under S. 71, Evidence Act is only proof of execution and not execution in the presence of the attesting witnesses. (*Ryves and Daniels*, JJ.) LALTA PRASAD *v.* DARSHAN SINGH. **1924 All. 149.**

——S. 71—*Attestors dead or proving hostile—Proof of document.*

If the attestors of a document are dead or prove hostile S. 71 requires evidence to prove

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the execution of the document, it is not necessary to prove execution in the presence of attesting witnesses. (*Ryves and Daniels*, JJ.) PALESHWARI PRASAD *v.* SHANKAR DAYAL.
71 I.C. 969.

———S. 71—*Mortgage — Execution — Recital of receipt of consideration—Auction-purchaser.*

The execution of the mortgage having been proved in the manner provided by S. 71 of the Evidence Act and on the face of it the bond appearing to have been executed in the presence of more than one person, the mortgage was good. The acknowledgment of the receipt of consideration in the bond was binding on the auction-purchaser. (*Richards*, C J. *and Banerji*, J.) NARAIN DAS *v* DILAWAR. **41 All. 230 = 82 I.C. 830 = 17 A L J. 141.**

———S. 71—*Execution of a document—Attestation.*

Execution and attestation of document may be proved by other evidence when the attesting witnesses are hostile and say that they signed a blank paper. (*Newbould and Panton*, JJ.) DINABANDHU PATRA *v.* SANATAN DANDAPAT. **48 I.C. 624.**

———S. 71—*Mortgage—Proof of execution*

Where in a mortgage suit it was found that one of the attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. (*Das and Adami*, JJ.) LAKSHMAN SAHU *v.* GOKHUL MAHARANA. **1 P. 184 = 1922 P. 415.**

———S. 73—'*Purports*'—*Handwriting—Comparison—Anonymous document.*

The word 'purports' in S. 73 of the Evidence Act means alleged. It is not necessary that the writing which is in dispute must itself in terms express or indicate that it was written by the person to whom it is attributed. When an anonymous writing is produced and ascribed by the prosecution to a particular person then the case for the prosecution is, that having regard to the admitted documents and the comparison between them and the disputed writing, the prosecution alleges that the disputed document purports to have been written or made by the accused. An anonymous writing ascribed to a particular person may therefore be compared under S. 73 of the Evidence Act. 37 C. 467. Diss. (*Chandavarkar and Batchelor*, JJ.) EMPEROR *v.* GANPAT BALKRISHNA.
13 Cr. L J. 505 = 15 I C. 649 = 14 Bom L R 310.

——— Ss. 73 and 47—*Handwriting—Proof—Comparison—Value.*

The ordinary methods of proving handwriting are (1) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion under S. 47; (2) by a comparison of handwriting as provided by S. 73; and (3) by the admission of the person against whom the document is

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tendered. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive and ought to be used with very great caution. (*Mookerjee and Buckland*, JJ.) SAROJINI DASSI *v* HARI DAS.
26 C.W.N. 113 = 34 C.L J 873 = 49 Cal. 235 = 1922 C. 12.

———S 73—*Signature—Comparison of,*

S. 73 of the Evidence Act is not limited to such documents only as are signed or contain some intrinsic statements of the identity of the writer. Any document alleged by a party to be in the handwriting of a particular person may, for purpose of proof be compared with other writing or signature admitted or proved to the satisfaction of the Court to have been made or written by that person. 37 C. 467. Diss; 14 Bom. L.R. 310. Appr. (*Ayling and Krishnan*, JJ.) VEERARAGHAVA AIYANGAR *v* SOURI AIYANGAR.
38 M L J. 608 = (1918) M.W.N. 718 = 24 M L T 447 = 48 I C. 68 = 8 L.W. 625.

———S. 73—*Inadmissible document—Relevancy and admissibility by comparison—Expert evidence, if necessary.*

Documents, not admissible in evidence otherwise, but signatures on which are admittedly the executants, become admissible under S. 73 even for the sole purpose of ascertaining by the Court itself by comparison, the genuineness of signatures on disputed documents without the aid of an expert. (*White*, C J. *and Tyabji*, J.) RAMASWAMI NAICK *v.* RAMCHANDRAN CHETTY. **(1914) M.W N. 240 = 22 I.C 6 7 = 1 L W. 136.**

———S 73—*Comparison of signatures—Adjudication based solely on such proof—Error in law—Second appeal.*

If a signature to a document is denied by the executant, a comparison of signatures is one of the admissible modes of proving handwriting and although in absence of other evidence such proof would be regarded as hazardous and inconclusive, it cannot be regarded as an error in law to base the conclusion on such proof alone and a Court of second appeal is not entitled to set aside a finding based on such comparison. 37 C. 467, Ref.; 10 C. 1017, Dist. (*Sundara Iyer*, J.) PASUPALETTI VENKAMMA *v.* SHAIK HAMED.
14 I C. 741 = 11 M L T. 424.

———S. 73—*Finger impression—Power of Court to direct accused to give—Admissibility.*

A Court has power to direct an accused person to make a finger impression and the same is admissible in evidence. So also is the evidence of an expert concerning the finger impression. (*Young* O C.J, *Heald and May Oung* JJ.) EMPEROR *v* NGA TUN HLAING.
1 Rang 759 = 2 Bur L J 270 = 1924 Rang. 115.

———S. 73—*Proceedings under S 476, Cr. P. Code—Accused asked to make a thumb-impression.*

Proceedings in inquiries under S. 476, Cr. P.C., being judicial proceedings and the person

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against whom they are directed being in the position of an accused person, to examine such a person as a witness in the course of such proceedings, is *ultra vires* except that he can only be examined under S. 342, Cr. P.C., but he cannot properly be asked questions merely to elicit a statement as a foundation for ordering his prosecution nor can he be compelled to make any thumb impressions under S. 73 of the Evidence Act. 5 I.C. 62; 2 Weir 598, Ref. (*Parlett*, J.) MAUNG PO NYUN *v.* MATU KURPEN CHETTY. 17 Cr. L J 316 = 35 I.C. 432 = 10 Bur. L T 32.

——S. 74—Dakhalnama—*Admissibility of.*

A *dakhalnama* is a public document and its copy is admissible without proof. (*Knox*, J.) SATNARAIN DUBE *v.* NARAIN BARGAH. 30 I C. 8 0 = 18 A.L.J. 935.

——S. 74—Dakhalnama—*Public document.*

A copy of a *dakhalnama* admissible in evidence without requiring any proof as a *dakhalnama* is a public document. (*Rafique*, J.) MUHAMMAD NASIR *v.* RAM KARAN SINGH. 25 I C. 629.

——S. 74—*Police station—Death Register.*

The death register kept at a *thana* is a public document within S 74 of the Act and a certified copy thereof is admissible in evidence. 41 M. 26, Appr. (*Teunon and Richardson*, JJ.) TAMIZ UDDIN *v.* TAJU 46 Cal. 152 = 46 I C 237 = 22 C.W.N. 822.

——S 74—Chittas — *Evidentiary value depends upon the purpose for which they were prepared.*

Chittas, prepared for a public purpose such as the distribution of revenue on the shares, or assessment and settlement of revenue on the share belonging to the Govt., or public documents while if they are prepared to ascertain Govt.'s share in the lands without prejudice to the rights of *bahali* shares they are private. Probative value of *chittas* depends on evidence in different cases. (*Chatterjea and Mullick*, JJ.) NABENDRA KISHORE ROY *v.* RAHIMA BANU. 31 I C. 693 = 19 C.W N 1015.

——Ss. 74 and 77—*Khasra papers—Nethersole settlement—Certified copy produced at a later stage.*

The Khasra of Nethersole settlement in Sambulpore Dt. is a public record and a certified copy of it may be accepted though filed at a late stage. (*Teunon and Mullick*, JJ.) BHUBAN SAHU *v* LAL SUNDAR JHANKAR. 21 I C. 604

——S 74—*Cr. P.C. S. 107—Notice under—Whether a public document—When admissible as evidence.*

A notice under S. 107 of the Cr. P.C. is a public document under S 74 of the Evidence Act, but is not admissible as evidence without proof that the parties mentioned in it are the parties concerned in question at issue. (*Holmwood and Sharfuddin*, JJ.) SHEIK AMJAD *v.* LACHAMI KANTA JHA. 23 I.C. 529 = 18 C W N. 644.

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——S 74—Teiskhana *Register.*

A *teiskhana* register prepared under the rules framed by the Board of Revenue under Reg. XII of 1817 is a Register kept for the information of the Collector but is not a public document. (*Mookerjee and Carnduff*, JJ.) CHALHO SINGH *v.* JHARO SINGH. 18 I C 61 = 39 Cal. 993.

——S. 74 — *Registers from Collectorate fixing areas and assessment.*

Registers which give details as to the areas of different villages and Govt. revenue chargeable thereon at the time of the settlement and which are produced from the collectorate, are public documents. (*Mookerjee and Carnduff*, JJ.) LAL MOHAN THAKUR *v.* NANDA LAL. 15 C L J. 191 = 14 I C 461 = 16 C.W.N. 890.

——S. 74—*Map prepared by Collector for private use.*

A map prepared by a Collector for his private use in his private capacity is not a public document. (*Mookerjee and Teunon*, JJ.) PRIYA NATH *v.* MAHENDRA KUMAR 14 C L.J. 578 = 10 I.C. 876 = 16 C.W N 317.

——S. 74—Chittas *prepared during partition of Taluq, admissibility of.*

Chitta prepared for the purpose of distributing the public revenue on a partition of an estate are public documents and admissible as evidence of the state of affairs then existing. (*Casperse and Doss*, JJ.) NOBENDRA KISHORE ROY *v.* DURGA CHARAN 10 I.C. 287 = 15 C.W N. 515.

——Ss. 74 and 68—*Report by a village nikha khwan regarding objection to entry whether public document—Secondary evidence.*

A report by a village *Nikha Khawan* to the *Mohavir* in the central office informing him of the objection to an entry of marriage in the village register by the former husband of woman is not a public document within S. 74 of the Evidence Act and no secondary evidence of its contents can be given under S. 65 of the Act. (*Agnew*, J.) FAZAL AHMAD *v* EMPEROR. 139 P.L.R 1914 = 23 I C 696 = 15 Cr. L.J. 344 = 1 P.R. (Cr.) 1914.

——S. 74—*Public document—Record of—Confession made before a Magistrate outside British India.*

Confession made before a Magistrate outside British India is admissible under S. 74 of the Evidence Act. (*Hallifax and Macnair*, J.Cs. GOVINDA *v.* EMPEROR. 23 Cr. L J 673 = 69 I.C. 257 = 17 N L.R. 113.

——Ss. 74 and 35—*Chaukidar's register.*

A Chaukidar's register of births and deaths is not a public document. No importance can

EVIDENCE ACT (I of 1872), S 74.

be attached to it in view of S. 65. (*Kanhaiya Lal and Kendall*, A.J.Cs.) BISHESHRA DAYAL *v.* HIRA LAL. 19 O.C. 221=36 I C 941= 4 O.L J 49.

——— S. 74—*Pedigree signed by Patwari, Lambaraar and Settlement officers and filed in* 1871.

A pedigree filed before the settlement Court in 1871 signed by the Patwaris and two lambardars, now dead, appearing in the pedigree itself and by the settlement officer himself, must under the circumstances be accepted as a public document. (*Piggott*, J.C.) SARJU *v.* RAM HARAKH. 18 I.C. 250.

——— S. 74 — *Registers under the Land Registration Act are public documents.*

Registers proposed and kept under Land Registration Acts are public documents and admissible in evidence. (*Jwala Prasad and Ross*, JJ.) RAMNANDEN SAHAY *v.* JAIGOVIND PANDEY. 2 P. 839=1924 P. 213.

——— S. 74—Parcha *slip.*

A *parcha* slip granted in the course of survey proceedings is not a public document. (*Mullick and Thornhill*, JJ.) RAMBHAGWAN *v.* EMPEROR. 47 I C. 82=19 Cr. L.J. 886.

——— Ss. 74 (1) (iii) and 65 (e)—*Probate of will, copy of, if a public document—Secondary evidence, if admissible.*

A copy of the probate of a will with the necessary endorsement of the Court granting it is a public document within the meaning of S. 74 (1) (iii) which may be proved by secondary evidence under S. 65 (*e*). (*Pratt*, J.C.) *In the matter of* ADIJA. 11 I.C. 261.

——— Ss 78 and 79—*Sanction of Local Government for prosecution in respect of offence—Proof of sanction.*

Sanction signed on behalf of the Chief Secretary does not convey that the Local Government has ordered or authorised the prosecution. In such a case the order must be proved according to the provisions of S. 78 of the Evidence Act. (*Walmsley and Suhrawardy*, J.) MUHAMMAD OZIULLAH *v.* BENI MADHAB CHOWDHARY.
36 C L J 180=24 Cr. L J. 111= 26 C W.N. 878=1922 Cal. 298.

——— S. 78—*Proceedings of Municipality—Printed books.*

Printed proceedings themselves would not be sufficient legal proof unless they answer the description of a printed book purporting to be published under the authority of the committee as required by S. 78 of the Evidence Act. (*Fletcher and Beachcroft*, JJ.) THE CORPORATION OF CALCUTTA *v.* PROMOTHO NATH MULLICK. 30 I.C. 643=16 Cr. L J. 669.

——— S. 78 (6)—*Proceedings of Municipality is public record.*

Under sub-S. 5 of S. 78 of the Evidence Act, proceedings of a municipal body in British India may be proved by a copy of such proceeding certified by the keeper thereof. (*Mookerjee and Cholzner*, JJ.) AKSHAY KUMAR CHAND *v.* THE COMMISSIONER OF BOGRA MUNICIPALITY. 37 C.L J. 589=1923 Cal. 675.

EVIDENCE ACT (I of 1872), S. 80.

——— S. 79—*Certificate of registration—Presumption of genuineness.*

The registering officer's evidence is not necessary to prove the certificate of registration the genuineness of which is to be presumed under S 79 of Evidence Act. (*Martineau*, J.) MUHAMMAD HASSAN *v.* SOHARA.
71 I.C. 805.

——— S. 80—*Dying declarations.*

The presumption under S. 80, Evidence Act, that the circumstances under which a document appears to be taken are true, applies to a dying declaration to which a certificate is appended by the Magistrate who recorded it, that it was read over to him and declared to be correct. (*Batchelor and Hayward*, JJ.) JIVRAM DANKARJI *v.* EMPEROR.
17 Bom. L.R. 881=16 Cr L J 761= 31 I.C. 361=40 Bom. 97.

——— S. 80—*Record by a Magistrate in Native State—Admissibility.*

The statement of an accused person recorded by a Magistrate in a Native State is inadmissible, unless the Magistrate himself deposes to it in person. (*Heaton and Shah*, JJ.) EMPEROR *v.* DHANKA AMRA. 13 Cr. L J 433= 24 I.C. 169=16 Bom. L.R. 261.

——— S. 80—*C.P.C., O. 18, R. 5—Reading of deposition by witness.*

Presumption under S. 80 of the Evidence Act can be raised, if the deposition is read over by the witness himself in Court, for that is substantial compliance with O. 18, R. 5, C.P.C. The absence of a certificate by the Judge at the foot of the deposition of its having been read over, etc., does not deprive it of the presumption under S. 80. (*Richardson and Shamsul Huda*, JJ.) RAMCHENDRA DAS *v* EMPEROR.
46 Cal 898=23 C W.N 661= 20 Cr. L J. 324=50 I C 660= 29 C L.J. 513.

——— S. 80—*Confession made before a Magistrate in a Native State—Admissibility.*

Confession made before a Magistrate outside British India is admissible under S. 80 of the Evidence Act. (*Hallifax and Macnair*, JJ.) GOVINDA *v.* EMPEROR. 69 I C 257= 23 Cr. L.J. 673=17 N.L.R. 118.

——— S. 80—*Old deposition—Absence of signature of presiding officer.*

Though there is no oral evidence to identify the deponent of a deposition made 60 years ago, it is not a sufficient reason to render S. 80 inapplicable, and though there is no signature of the presiding officer over it, the presumption that the copy is a true copy may safely be drawn. (*Daniels*, A J.C.) SARABJIT *v.* MATA DIN. 60 I.C. 437=7 O L J. 542.

EVIDENCE ACT (I of 1872), S. 80.

———S. 80—*Recital of statement in a judgment.*

The prosecution must prove conclusively that the statement made by the accused was necessarily a false statement, before a conviction can be sustained under S. 193, I.P.C. The recital in a judgment of a statement made by the witness is not the same thing as a record of the deposition of the witness. Nor can such recital be accepted as evidence under S. 80 of the Evidence Act and it, therefore, cannot form the basis of a prosecution under S. 193, I.P.C. (*Jwala Prasad*, J.) NIRGHIN MAHTON *v.* EMPEROR. 56 I C. 660= 21 Cr. L.J. 500.

———Ss. 80 and 114—*Confession duly made.*

Under S. 80 confession by any prisoner or by any accused taken in accordance with law and purporting to be signed by the examining Magistrate shall be presumed to be so made. The officer who recorded the confession may be examined as a witness. (*Sharfuddin and Atkinson*, JJ.) GUJA MAGHI *v.* EMPEROR. 18 Cr. L.J. 445=38 I C. 1003=2 P.L.J. 80.

———S. 80—*Deposition not read over—Admissibility.*

A statement not read over to or corrected by the witness in accordance with law is not admissible against the person making the same. (*Shaw*, J.C.) NGA SAN MEGIN *v.* EMPEROR. 18 Cr. L.J 569= 15 I.C. 985=1 U B.R. (1912) 123.

———S. 81—*Presumption of genuineness—What includes.*

Presumption of genuineness of a document does not include the presumption that the document was printed or published by the particular person by whom it purports to have been published. (*Benson, Sundara Iyer and Phillips*, JJ.) C JEREMIAH *v.* F. S. VAS. 36 Mad 467=22 M L.J. 73= (1911) 2 M.W N. 576=12 I C. 961= 12 Cr. L.J. 585=10 M L.T. 506.

———S 81—*Certified copy of document—Whether admissible.*

A certified copy of a document *Fard hissa Kashi baghat* drawn up at the First Regular Settlement is admissible in evidence, an extract from a Wajib-ul-arz may be taken as evidence of custom. (*Lindsay*, J.C.) LACHMAN *v.* SATROHAN SINGH. 38 I.C. 67=19 O. C. 363.

———S. 83—Thak *and Surveymaps—Value of.*

There is no inflexible rule that a survey map must have preference over a *thak* map and it is not incumbent on Court to follow either the one or the other. Where the *thak* proceedings and the decision of a dispute took place in the presence of the predecessors of the parties to the suit, the thak map is valuable evidence in a suit between the successors. 35 Cal. 621, Foll. (*Mookerjee and Panton*, JJ.) H. H. MAHARAJAH OF COOCH BEHAR *v.* RAJA MAHENDRA RANJAN. 66 I.C. 923=34 C.L.J. 466.

EVIDENCE ACT (I of 1872), S. 83.

———S. 83—*Rennell's map — Presumption of accuracy.*

Where Rennell's map is referred to as evidence there is a presumption of its accuracy under S. 83 of the Act in respect of such matters as to which it is admissible in evidence. (*Woodroffe and Cuming*, JJ.) SECY. OF STATE *v.* ANANDA MOHAN ROY. 66 I.C. 287=34 C. L.J. 205.

———S. 83—Thak *and survey maps—Value of.*

Thak and survey maps are valuable evidence of the state of things at the time they were made but they do not raise any presumption in law that they show the state of things at the time of the permanent settlement. (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA *v.* WAZED ALI. 65 I C. 866= 34 C.L J. 141.

———S. 83—Thak *map—Presumption as to accuracy.*

Thak maps are always considered by Courts as good evidence and although the value of the *thak* map depends upon its accuracy, a *thak* map is not always inaccurate. Only substantial and not mathematical accuracy, can be expected from these ancient maps. (*N. R. Chatterjee and Roe*, JJ.) KRISHNA KALYANA DASI *v.* BRAUNFIELD. 36 I C. 184= 20 C W N. 1028.

———S. 83—*Documents of public nature—Meaning.*

The words "documents of a public nature" mean "public documents" and not "documents prepared by officers of Government". (*Chatterjee and Mullick*, JJ.) NABENDRA KISHORE ROY *v.* RAHIMA BANU. 31 I C. 695= 19 C.W.N. 1015.

———S. 83—*Map prepared by Govt. for private purposes.*

A map prepared by private arrangement with Govt. servant for the settlement of the silted bed of a river raises no presumption under the section. (*Holmwood and Chapman*, JJ.) RAHIM-UD-DIN MUNSHI *v.* BHABANGANA DEBYA. 19 I.C. 572.

———S. 83—*Private map—Identity of land—Boundaries—Identification.*

S. 83 of the Evidence Act does not refer to the question of the admissibility of a private map. It must depend upon the relevancy of the map in relation to the question in controversy. A private map may be relevant as against the party by whom it was prepared or his predecessor as an admission or it may be used as evidence, possibly even against a stranger on questions of public or general interest if it was made by a deceased person of

EVIDENCE ACT (I of 1872), S. 83,

competent knowledge. (*Mookerjee and Beachcroft*, JJ.) SHIB CHARAN DEY *v.* NIL KANTHA MAHATA. **16 I.C. 747=17 C.L J. 642.**

———**S. 83**—*Maps and Surveys—Value as evidence.*

Maps and Surveys made for revenue purposes are official documents prepared by competent persons and with sufficient publicity and notice to persons interested. They are valuable evidence of the state of things at the time of their preparation though they are not conclusive and may be shown to be wrong. (*Benson and Sundara Aiyar*, JJ.) MURTHI SANKARAN *v.* MANAVIKRAMAN. **(1911) 1 M.W.N 213 = 10 I.C. 653=9 M.L.T. 415.**

———**S. 83**—*Survey maps—Value of.*

Survey maps are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence as to the state of things at the time they were prepared. They are not conclusive and may be shown to be wrong but in the absence of evidence to the contrary, they may be judicially received in evidence as correct when made. 30 Cal. 291, Foll. (*Rigg*, J.) MAUNG THIN *v.* MA ZI ZAN. **44 I.C. 247.**

———**S. 83**—*Revenue map — Entry in — Value of, improving title.*

An entry in a Revenue Map is not sufficient to establish title to immoveable property. (*Twomey*, J.) AUNG HLA *v.* TON GYI. **8 L.B.R. 264=33 I.C. 432=9 Bur. L.T. 242.**

———**S. 85**—*Registered power-of-attorney—Registration Act, S. 60.*

A registered power-of-attorney is admissible in evidence to prove agency under S. 85 of the Evidence Act. (*Kanhaiya Lal*, A.J.C.) HABIB-UN-NISSA *v.* MUSHARAF ALI. **33 I.C. 661 = 18 O C. 372.**

———**S. 87**—*Revenue maps—Accuracy of—Presumption—Rebuttable.*

The Courts have always given great weight to the accuracy of survey maps. They are not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate. Where the maps are proved to have been based on insufficient material, the weight due them is not much. (*Lord Dunedin*). SECY. OF STATE *v.* RADHA KISHORE MANIKKYA BAHADUR. **44 Cal. 828=(1917) M.W.N. 26= 14 A L J. 1203=18 Bom. L.R. 1027= 21 C.W.N. 291=5 L W. 570= 25 C.L.J. 425=38 I.C. 379= 43 I.A. 303 (P.C.).**

———**S. 87**—*Custom—Evidence of—Books.*

Per *Mookerjee*, J.—Reference may legitimately be made to the work of Mr. Crokes on Castes and Tribes of the North-Western Provinces and Oudh, as an authoritative statement of customs prevalent among the Eraki sect of

EVIDENCE ACT (I of 1872), S. 90—Ancient Wills.

Mahomedans. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) MARIAM BIBEE *v.* SHAIKH MAHOMED IBRAHIM. **48 I.C. 561= 28 C.L.J. 306.**

———**S. 88**—*Telegram—Proof that it emanated from Govt.*

The sanction of Local Govt. to prosecute a person for an offence under S. 124-A of the Penal Code, communicated by telegram must be proved to have emanated from the Govt. The Court is forbidden by the express provisions of S. 88 of the Evidence Act to make any presumption as to the person who sent the telegram. (*Wallis*, C. J., *Ayling and Sadasiva Aiyar*, JJ.) VARADARAJULU NAIDU *v.* EMPEROR. **42 Mad. 885=37 M.L J. 80= 51 I.C. 343=20 Cr. L J. 455= (1919) M.W.N. 669.**

———**S. 90.**

ANCIENT WILLS.
APPELLATE COURT'S INTERFERENCE.
CERTIFIED COPY OF ANCIENT DOCUMENTS.
COMPUTATION OF THIRTY YEARS.
COPY OF ANCIENT DOCUMENT.
DISCRETION.
DOCUMENT, MEANING OF.
NATURE OF PRESUMPTION UNDER.
PROOF OF CUSTODY.
PROOF OF GENUINENESS.

Ancient wills.

———**S. 90**—*Ancient wills—Whether presumption arises.*

The presumption of genuineness of ancient document does not apply to wills in a Probate Court. (*Chatterjee and Mullick*, JJ.) SHIYAM LAL *v.* RAMESWARI BASU. **33 I.C. 273= 23 C.L.J. 82.**

———**S. 90**—*Ancient wills—Will thirty years old—Presumption under S. 90 when can't be drawn.*

If the circumstances found, raise grave suspicions as to the genuineness of a will, no presumption under S. 90 of the Act could be drawn. (*Johnstone*, C. J. *and Chevis*, J.) GUJAR SINGH *v.* MEHAR SINGH. **97 P.W.R. 1916=34 I.C 168= 57 P.L.R. 1917.**

———**S. 90**—*Ancient wills—Execution suspicious—Deliberate delay.*

A will purported to be executed in 1887 was brought to light for the first time in 1907 when it was produced in a Court of Law. In 1910 an application for probate in respect of it was made but it was ultimately withdrawn. At that time only one of the attesting witnesses was said to have been alive. Yet no further attempt was made to bring the will into Court till some ten years later when even that witness was dead. There was no reasonable explanation about the delay after 1910 in making the application for probate. There was no evidence

EVIDENCE ACT (I of 1872), S. 90—Ancient Wills.

as to the custody of the will before 1907, *held*, that the applicant cannot get the benefit of S. 90, Evidence Act. (*Prideaux and Kotwal*, A.J.Cs.) CHANNULAL *v.* MT. PUNA.
1923 Nag. 169.

——S. 90—*Ancient wills—Registration of will—Presumption of genuineness.*

The will in dispute having been duly registered and the document being over thirty years old, it must, under S. 90 of the Evidence Act, be presumed that it was genuine document, and the fact that it was registered, raised the presumption that the testator was of sound mind at the time of the execution of the will. (*Kanhaiya Lal*, J.C., *and Daniels*, A. J. C.) BABU BADRI PRASAD SINGH *v.* ANNAPURNA KUAR. **52 I.C. 837=6 O.L.J. 311.**

Appellate Court's Interference.

——S. 90—*Appellate Court's interference—Appellate Court's conclusion—Second appeal.*

A finding of fact that a deed is admissible, arrived at by the Appellate Court without sufficient grounds being shown, is subject to second appeal, if it has prejudiced the trial of the appeal. (*Piggott and Kanhaiya Lal*, JJ.) LOKMAN DAS *v.* GANGA SAHAI. **60 I.C. 96.**

——S. 90—*Appellate Court's interference—Ancient document—Custody—Interference in appeal with discretion of lower Court.*

The question of custody of a document under S. 90 of the Evidence Act is one to be decided upon circumstances of each case and the Appellate Court will be slow to interfere with the discretion of the lower Court in the matter. (*Woodroffe and Mullick*, JJ.) DINAMANI CHAUDHURANI *v.* JAGAT CHANDRA BHATTACHARJEE. **23 I.C. 773.**

——S. 90—*Appellate Court's interference.*

The presumption under S. 90 is one in which the Court has to exercise its discretion with the due care and once it has been exercised, an appellate Court will be very slow to interfere. (*Chevis*, J.) MUHAMMAD USMAN *v.* RAHIM BAKHSH. **44 I.C. 559=57 P.W.R. 1918.**

——S. 90—*Appellate Court's interference.*

Though in the first Court the presumption under S. 90 of the Evidence Act regarding the genuineness of a document is drawn and the document is filed, an Appellate Court is not bound to draw such a presumption. (*Sundara Aiyar and Spencer*, JJ.) RAMIAH *v.* VEERAPPUDIAN. **37 Mad 436=11 M.L.T. 69=22 M.L.J. 217=14 I.C. 394=(1912) M.W.N. 117 and 530.**

Certified Copy of Ancient Documents.

——Ss. 90 and 65—*Certified copy of ancient documents—Presumption—Non-production of original—Presumption, applicability of.*

The presumption allowed by S. 90 of the Evidence Act applies to the certified copy of

EVIDENCE ACT (I of 1872), S. 90—Copy of Ancient Documents.

the mortgage-deed. The original deed being presumably in the possession of the defts., the plffs. were entitled to give secondary evidence of the contents without notice to the defendants inasmuch as they must have known that they would be required to produce it in the suit for redemption. (*Rafique and Walsh*, JJ.) DWARKA SINGH *v.* RAMANAND UPADHYA.
41 All. 592=17 A.L.J. 711=51 I.C. 275=1 U.P.L.R. (H.C.) 81.

——S. 90—*Certified copy of ancient document—Copy of a document—Presumption.*

A certified copy of receipt more than thirty years old, is inadmissible in evidence in the absence of any indication of the record from which it was obtained. No presumption can be made in favour of a copy of a document under S. 90 of the Evidence Act. (*Drake Brockman*, J.C.) NATHURAM *v.* JAGANNATH.
55 I.C. 426=16 N.L.R. 106.

Computation of thirty years.

——S. 90—*Computation of thirty years—Presumption.*

There is no presumption as to the genuineness of a document not thirty years old when produced, but thirty years old when the evidence was gone into. (*Banerjee*, J.) CHIRAUNJI LAL *v.* KALLO. **25 I.C. 412=12 A.L.J. 507.**

——S. 90—*Computation of thirty years.*

The period of 30 years mentioned in S. 90, Evidence Act, is to be reckoned from the date when its genuineness is put in controversy and not from the date when it was exhibited in Court. (*Martineau and Zafar Ali*, JJ.) LADHA SINGH *v.* MT. HUKAM DEVI.
75 I.C. 57=4 Lah. 233.

——S. 90—*Computation of thirty years.*

The period of thirty years under S. 90 must be reckoned as from the date on which the genuineness or otherwise of the document becomes the subject of proof and not from the date of suit. (*Broadway*, J.) HARI RAM *v.* MUTSADDI. **42 I.C. 80=146 P.W.R. 1917.**

——S. 90—*Computation of thirty years—Time of hearing.*

Under S. 90 of the Evidence Act the Court can presume the genuineness of a document thirty years old not on the date of the suit or on the date of its production but on the date when arguments were heard. (*Stuart*, J.C.) MAHADEO PRASAD *v.* MUSAMMAT NASIBAN.
64 I.C. 368=6 O.L.J. 615.

Copy of Ancient Documents.

——S. 90—*Copies of ancient documents.*

S. 90 of the Act applies to copies of ancient documents also. (*Woodroffe and Walmsley*, JJ.) KHAGESWAR SARMA *v.* SOMESWAR.
63 I.C. 518=33 C.L.J. 382.

EVIDENCE ACT (I of 1872), S. 90—Copy of Ancient Documents.

——S. 90—*Copies of ancient document—Presumption if applicable.*

The presumption mentioned in S. 90 of the Evidence Act is applicable to the copy produced which was more than thirty years old. 34 Cal. 1059, Foll. (*Mookerjee and Beachcroft*, JJ.) BANWARI LAL *v.* DWARKANATH MISSIR. **52 I.C. 823=29 C.L.J. 577.**

——S. 90—*Copy of ancient document—Presumption if applicable to.*

Where there is no evidence at all as to the making of a private copy of a document more than 30 years old, proof would be necessary that it was compared with the original before it would be admitted in evidence. (*Phillips and Devadoss*, JJ.) HOTA VEERABADRAYYA *v.* VENKATAKRISHNA RAO **(1923) M W.N. 464=18 L W. 404=1923 Mad. 674.**

——S. 90—*Copies of ancient documents—Presumption as to.*

The presumption as to genuineness of documents more than 30 years old also applies to copies coming from proper custody. (*Spencer and Devadoss*, JJ.) JAKKAM REDDI SESHADRI REDDI *v.* PICHI REDDI. **32 M.L.T. (H.C.) 89=16 L.W. 839=1923 Mad. 163.**

——S. 90—*Copies of ancient document.*

The presumption under S. 90 of the Evidence Act applies to copies of ancient documents, if it is proved that the copy is a true copy. *Schwabe*, C.J., *Oldfield and Coutts-Trotter*, JJ.) SUBRAMANYA SOMAYAJULU *v.* SEETHAYYA. **16 L.W. 462=(1922) M.W.N. 614=31 M.L.T. 347 (H.C.)=46 M. 92=1923 Mad 1.**

——S. 90—*Copy of ancient document—"Presumption in case of copies thirty years old."*

Under S. 90, a copy thirty years old, is presumed by the Court to be in the handwriting of the person in whose handwriting it purports to be. (*Spencer and Tyabji*, JJ.) MANAVIKRAMAN *v.* NILAMBUR THACHARAKAVIL. **31 I.C. 579.**

——S. 90—*Copies of ancient documents.*

The presumption as to ancient documents contained in S. 90 of the Evidence Act applies not only to original documents but also to copies thereof. 22 All. 294, Foll. (*Spencer and Seshagiri Aiyar*, JJ.) NANU NAIR *v.* KANTAN ASHTA MOORTHI. **29 M L J 772=29 I.C. 386=2 L.W. 509.**

——S. 90—*Copy of ancient document.*

The presumption as to the genuineness of an ancient document can be drawn where the original has been lost but its copy has been produced. (*Subramania Iyer and Benson*, JJ.) PONNAMBALATH PARAPRAVAR *v.* KAROTH SANKARA NAIR. **12 I.C. 453=21 M.L.J. 981.**

EVIDENCE ACT (I of 1872), S. 90—Discretion.

——S. 90—*Copies of ancient documents not produced before Court.*

No presumption can be made under S. 90, Evidence Act, in favour of any document which is itself produced before the Court invited to make the presumption. The production of a copy is insufficient. 5 Cal. 886; 22 All. 294; 93 P.R. 1910; 21 M L.J. 981, Diss. The rule of presumption embodied in S. 90, is one to be applied with exceeding caution in India. 18 W.R. 485; 6 Cal. 208; 11 Cal. 539; 9 C.L.R. 429; 11 Bom. 89, Appr. (*Stanyan*, A.J.C.) SHRIPUJA *v.* KANHAYALAL. **53 I.C. 947=18 N.L.R. 192.**

——S. 90—*Copies of ancient documents.*

A Court can accept a copy in evidence and apply the presumption under S. 90 to it. (*Piggott*, J.C.) SARJU *v.* RAM HARAKH. **18 I.C. 250.**

Discretion.

——S. 90—*Discretion—Presumption—Genuineness—Practice.*

In practice a Court does not ordinarily decide whether it will make the presumption under S. 90 of the Evidence Act or not, until all the evidence in the case is before it. The mere fact that the Court allows evidence to be given about the proof of a deed, does not debar it from making the presumption under S. 90. (*Chamier*, J.) IBRAHIM *v.* RAM NARAIN. **16 I.C. 483=10 A L.J. 87.**

——S. 90—*Discretion—Presumption—Caution.*

Before a Court can presume a document to be genuine under S. 90 of the Act it should be satisfied *aliunde* that there is a good ground for accepting it as a true document. (*Rattigan and Scott-Smith*, JJ.) JESA LAL *v.* GANGA DEVI. **81 P.R. 1913=821 P L R. 1913=20 I.C. 863=211 P.W.R. 1913.**

——S. 90—*Discretion—Documents thirty years old—Admissibility—Care and caution.*

Considerable care and caution should be exercised in accepting documents, more than 30 years old. Acceptance of genuineness of the document by the parties many years ago is a matter in its favour. (*Rattigan and Scott-Smith*, JJ.) GHULAN NABI *v.* ALLAHDIN. **241 P L R. 1913=19 I.C 954=143 and 204 P.W.R. 1913.**

——S. 90—*Discretion—Presumption as to ancient documents.*

The discretion of the lower Courts in the matter of raising the presumption under S. 90 must be interfered with by the High Court in second appeal unless the reasons given by the lower Courts are *prima facie* unsound. (*Sadasiva Iyer and Spencer*, J.) VAITHINATHASAMI *v.* NATESA. **41 M L J 310=14 L.W. 416=69 I C. 289=(1921) M.W.N. 756.**

EVIDENCE ACT (I of 1872), S. 90—Discretion.

———S. 90 — *Discretion*— Shankalpnama, *presumption as to*.

The presumption as to genuineness of a document under S. 90 of the Act is within the discretion of the Trial Court and Courts should be very careful to raise any such presumption in favour of deeds of *Shankalap* produced for the first time during the trial. (*Lindsay*, J.C.) HAR PRASAD *v.* BIKRAM MOJIT.
61 I.C. 939=8 O.L.J 131.

———S 90 — *Discretion — Presumption— Proof unsatisfactory.*

It is open to a party to rely on the presumption under S. 90 of the Evidence Act and also on proof; and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. (*Stuart*, J.C.) DWARKA *v.* MAKKA.
6 O.L.J 20=49 I C. 419=
1 U.P.L.R. (J.C) 23.

———S. 90 —*Discretion—Ancient document —Presumption—Discretion of Court.*

S. 90 does not lay down any rule whether or not in the circumstances the Court will make the presumption contemplated. Where the original is not proved to be lost or to have been missing or to be in the custody of any person who declined to produce it, no presumption regarding such original can be raised. (*Kanhaiya Lal and Kendall*, A.J.C.) TIKA *v.* MAHABIR PRASAD. 36 I.C. 629=18 O C. 92.

———S. 90 —*Discretion — Presumption of genuineness —When not to be drawn.*

No presumption could be raised under S. 90 of the Act where the history of the document shows that it was attacked as a forgery many years before. (*Piggott*, J.C. *and Lindsay*, A.J.C.) GAJRAJ SINGH *v.* MUHAMMAD BAKER ALI KHAN. 20 I.C. 62.

Document, meaning of.

———S. 90—*Document, meaning of.*

A statement of the existence of a mortgage contained in a settlement report thirty years old and purporting to have been signed by the mortgagor and coming from proper custody, is not an acknowledgment and no presumption can arise as to its execution as the mortgagor did not execute or attest the report supposing the report is a document within the meaning of S. 90 (*Richards*. C.J. *and Banerjee*, J.) GOKUL SINGH *v.* SAHEB SINGH.
38 I.C. 162=15 A.L.J. 121.

———S. 90—*Document, meaning of—Sale deed — Genuineness — Evidence to prove, if necessary.*

A sale-deed more than 30 years old is presumed to be genuine under S. 90 and no evidence to prove its genuineness need be given. (*Sundar Lal*, J.) GULAB *v.* MUHAMMAD ISMAIL. 38 I.C. 898.

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

———S. 90 —*Document, meaning of—Ancient document—Presumption.*

The presumption arising under S. 90 of the Evidence Act can be applied when the signature of an illiterate person executing a deed has been made by another on his behalf. (*Newbould*, J.) SHED AHAMED *v.* IBRAHIM.
52 I.C. 814.

———S. 90— *Documents, meaning of — Ancient document.*

S. 90. does not apply to old papers which are neither signed nor sealed nor purport to be in the handwriting of any particular person. (*Chitty and Beachcroft*, JJ.) JANENDRA MOHAN CHOUDHURY *v.* GOPAL CHANDRA HAR. 40 I.C. 450.

———S. 90—*Documents, meaning of—Thak maps—Presumption—Map prepared by Collector in private capacity.*

S. 90 does not establish the accuracy of a map. (*Mookerjee and Teunon*, JJ.) PRIYA NATH *v.* MAHENDRA NATH KUMAR.
16 C.W.N. 317=10 I.C. 376=
14 C.L.J. 378.

———Ss. 90 and 114—*Documents, meaning of—Unsigned accounts.*

Neither S. 90 nor S 144 enables the Court to presume that unsigned accounts more than a century old, which do not purport to be in handwriting of any particular person or persons, were written by authorised accountants. (*Sadasiva Aiyar and Napier*, JJ.) NAINA PILLAI *v.* RAMANATHAN CHETTIAR.
41 I.C. 788=33 M.L.J. 84.

———S. 90— *Document, meaning of — Pedigree extracted from settlement record— Presumption.*

A pedigree extracted from the settlement record and signed by same persons named in the pedigree being more than 30 years old and coming from the proper custody, can be presumed to be genuine under S. 90 of the Evidence Act. (*Piggott*, J. C *and Lindsay*, A.J.C.) BHABUTI SINGH *v.* KHETAL SINGH.
21 I.C. 274.

———S 90—*Document, meaning of—Author unknown—Document inadmissible.*

Where a party producing a document more than 30 years old cannot show and the document itself does not purport to show who prepared or signed it, the mere fact of the document being more than 30 years old does not make it admissible without proof under S. 90 of the Evidence Act. (*Miller*, C J *and Mullick*, J.) CHARITTAR RAI *v.* KAILASH BIHARI. 3 Pat. L.J. 303=4 P L.W. 213=
44 I.C. 422=(1918) Pat. 143.

Nature of Presumption under.

———S. 90—*Nature of presumption— Scribe signing for the executants.*

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

Although in the case of sale deeds more than 50 years old the presumption of law was that they were executed by the persons who purported to execute them, there was no presumption that the scribe who signed these documents for the executants had authority from the executants to do it. 15 A.L.J. 121 and 60 I.C. 90 Foll. (*Gokul Prasad*, J.) HAJI SHAIKH BOODHA *v.* SUKHRAM SINGH. **1923 All. 420 (2).**

——— S. 90—*Nature of presumption—Document more than 30 years old—Proof of execution—Authority to sign—T.P. Act, S. 59.*

Though a mortgage purporting to be more than 30 years old was not executed by the mortgagors at all but by the scribe on behalf of the executants, the Court could presume, under S. 90 of the Evidence Act that the signature was in the handwriting of the scribe and was executed by him but not that he had authority from the mortgagors to sign their names upon the document. The document was not admissible in evidence without such proof. (*Tudball*, J.) SHEO NANDAN AHIR *v.* RAM LAGAN SINGH. **30 I.C. 908=13 A.L.J. 921.**

——— S. 90—*Nature of presumption under—Kabja receipt—40 years old.*

From Kabja receipts, the Court is entitled to presume that the person named therein as purchaser had obtained possession through the Court. When that document was over 40 years old, although it is possible that physical possession of the land may not have been given to the purchaser, there is no reason why the Court should presume that no possession was given. (*Macleod*, C.J. *and Crump*, J.) PANDURANG WASUDEV *v.* BASAPPA BIN SHIDDAPPA. **1923 Bom. 364.**

——— S. 90—*Nature of presumption under—Old document—Conduct of parties.*

Assuming that a document, which is produced apparently from proper custody, was executed, still if there are circumstances which show that it was not acted upon as one would have expected a document of that nature to be acted upon, the presumption as to the title created by such document falls down. (*Macleod*, C.J. *and Crump*, J.) MAHADEO RAMCHANDRA PATKAR *v.* RAGHOJI JIJYAJI.
1923 Bom. 293.

——— S. 90—*Nature of presumption.*

The presumption that arises under S. 90 of the Evidence Act only is applicable to the genuineness of old documents coming from proper custody; it does not further go to the extent of holding that the documents were in fact executed by persons possessed of the requisite authority. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SRISH CHANDRA GHOSH MANDAL. **27 C.W.N. 964=1924 Cal. 286.**

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

——— S. 90—*Nature of presumption under—Presumption does not extend to authority of executant.*

The presumption under S. 90 of the Evidence Act, only exonerates the plaintiff from calling executant for the purpose of proving that he signed the document for the principal. He must prove that executant had authority from the principal to sign his name. (*Walmsley and B.B. Ghose*, JJ.) RAMANI KANT RAY *v.* BHIMNANDAN SINGH. **50 Cal. 526=1924 Cal. 82.**

——— S. 90—*Nature of presumption under—Scope of.*

The authority of the person making a grant, the genuineness whereof is presumed by the Court under S. 90, is not proved by that section. (*Mookerjee and Roe*, JJ.) BASI NATH PAL *v.* JAGAT KISHORE ACHARJEE.
20 C.W.N. 643=38 I.C. 298=23 C.L.J. 583.

——— S. 90—*Nature of presumption under—Ancient document—What it proves.*

S. 90 establishes simply that an ancient document was executed by the person whose signature it purports to bear, but it cannot prove the authority of the executants to bind the landlord. 3 C. 557; 6 C. 209, Rel. on. (*Mookerjee and Carnduff*, JJ.) MOHORAM SHEIKH CHAPRASI *v.* TELAMUDDIN KHAN,
15 C.L.J. 220=13 I.C. 606=16 C.W.N. 567.

——— S. 90—*Nature of presumption under—Document 30 years old—Consideration.*

The passing of consideration for a document which is more 30 years old and which was never questioned up to the time of the suit, should be taken to be proved even in the absence of evidence as strong as is required in recent transactions. (*Sadasiva Aiyar and Spencer*, JJ). JAGANA SANYA SIAT *v.* MYCHERLA PEDA ATCHAUNNA. **15 L.W. 289=70 I.C. 759=42 M.L.J. 339.**

——— Ss. 90 and 114—*Nature of presumption under—Not to be lightly interferred with in appeal.*

The presumptions drawn by the Court of first instance especially when it concerns the admissibility of a document under S. 90 of the Evidence Act should not be lightly treated by the Court of appeal. (*Spencer and Tyabji*, JJ.) MANAVIKIRAMAN *v.* NILAMBUR TACHARKAVIL. **31 I.C. 579.**

——— S. 90—*Nature of presumption under—Ancient document — Presumption— Question of law or fact.*

Per *Sankaran Nair*, J.—The presumption as to genuineness of a document 30 years old under S. 90 is one of fact and the High Court cannot interfere in second appeal with a finding

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

given on it by the Lower Court. Per *Tyabji*, J.—The presumption is one of law and the High Court can see if the finding is correct. 26 A. 581 ; 17 C.W.N. 108, Foll. (*Sankaran Nair and Tyabji*, JJ.) PARANKUSA ZATINDRA MAHADESIKASWAMI *v.* SUBRAMANIA PILLAI.
26 I.C. 117.

——S. 90—*Nature of presumption under—Authority to sign.*

The presumption under S. 90 of the Evidence Act will not be justified in favour of the authority of a person to sign for an illiterate executant, (*Wazir Hasan*, A.J.C.) RAGHUBAR SINGH *v.* SANWAL SINGH.
8 O L.J. 23=61 I.C. 125=3 U.P.L.R. (J.C.) 9.

Proof of Custody.

——S. 90—*Proof of custody.*

If a party cannot explain properly how he came to possess a document, the custody of the document is not clearly proved. (*Chatterjee and Greaves*, JJ.) MANMATHA NATH *v.* ANATH BANDHU PAL. **50 I.C. 222=23 C.W.N. 201.**

Proof of Genuineness.

——S. 90—*Proof of genuineness — No signature but a line only.*

Where in a document thirty years old there was, in place of signature only a line, no presumption can be drawn that the scribe executed it for the executant and the deed is not admissible, though the deed was referred to in another deed equally inadmissible. (*Piggott and Kanhaiya Lal*, JJ.) LOKMAN DAS *v.* GANGA SAHAI. **60 I.C. 96.**

——S. 90—*Proof of genuineness.*

No proof of genuineness is required for a document thirty years old. (*Sundar Lal*, J.) GULAB *v.* MUHAMMAD ISMAIL. **35 I C. 598.**

——S. 90—*Proof of genuineness—Presumption as to old documents — Discretion of Court.*

Under S. 90 a Court has got a discretion to use the general presumption as to the genuineness of a document more than thirty years old and produced from proper custody. But it can call for proof of the execution thereof if there is evidence to doubt its genuineness. 26 A. 581 at p. 586, Rel. Where a Lower Appellate Court does not give reasons for its views as to the applicability of the presumption under S 90 of the Evidence Act, the High Court will interfere in second appeal. 11 C. 539, Rel. (*Mookerjee and Carnduff*, JJ.) IMARIT CHAMAR *v.* SRIDHAR PANDAY.
15 C.L.J. 7=13 I.C. 120=17 C.W.N. 108.

——S. 90—*Proof of genuineness.*

The presumption in favour of due attestation of documents thirty years old is liable to be rebutted by the party against whom it is proved

EVIDENCE ACT (I of 1872), S. 91—Confession.

and on their successful rebuttal fairness requires that an opportunity should be given to the party producing it of proving fully the deaths of all attesting witnesses. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J.C.) NARAIN SINGH *v.* DEPUTY COMMISSIONER OF PARTABGARH.
55 I.C. 896=7 O.L.J. 93.

——S 91.

ADMISSION.
COMPROMISE.
CONFESSION.
CONTRACT.
DECREE OF COURT.
DEPOSITION OF WITNESS.
INTENTION OF PARTIES.
LEASE.
LICENSE.
LOST DOCUMENT.
MORTGAGE,
ORAL EVIDENCE.
PARTITION.
POLICE DIARY.
POWER OF ATTORNEY.
PROMISSORY NOTE.
RECEIPT.
RECITALS.
REGISTRATION ENDORSEMENT.
SALE.
TRANSFER OF PROPERTY.

Admission.

——S. 91—*Admission—Effect of—Document inadmissible.*

In a suit for possession of properties the defence was that plff. had waived his rights by an agreement by which he gave up all his rights in the estate on condition that deft. paid Rs. 1,000 to the gowshala. *Held*, that the document was inadmissible in evidence for want of registration though the plff admitted execution of the document. The document was not admissible even in so far as it related to moveable property. (*Shadi Lal and Broadway*, JJ.) BISHESHAR LAL *v.* BHURI.
56 I.C. 595.

Compromise.

——S. 91—*Compromise of suit—C.P.C., O. 23, r. 3—Oral evidence.*

Where the compromise is reduced to writing under O 23, R. 3 no extraneous evidence, oral or documentary regarding the terms of the compromise is admissible. (*Mitra*, A.J.C.) HUKUM CHAND *v* RADHA KISHU.
29 I.C. 838=11 N.L.R. 110.

Confession.

——S. 91—*Confession — Statement of accused at departmental enquiry—Proof.*

The statements made by an accused at a departmentel enquiry were not matters required by law to be reduced to the form of a document and consequently S. 91, I.E.A. has no application. Confessions made at such enquiries are

EVIDENCE ACT (I of 1872), S. 91—Contract.

reliable as well as legally admissible. (*Piggott*, J.) HAIDAR RAZA *v.* EMPEROR.
36 All. 222=16 Cr. L.J 369=25 I C 321=12 A.L J 306.

Contract.

——**Ss. 91 and 92**—*Contract in writing—Oral evidence to show agency—If admissible.*

Where a person has signed a written contract, he cannot let in oral evidence to show that he contracted only as an agent. (*Pratt*, J.) EBRAHIMBHOY *v.* HASSAN
45 Bom. 1242=63 I.C 482=23 Bom. L.R. 767.

——**S. 91**—*Contract—Suit on document—Secondary evidence not admissible—Effect.*

The language of S. 91 of the Evidence Act is clear and definite and wherever the terms of the contract are reduced to writing and that writing is, for any reason, inadmissible in evidence the promisee must lose his remedy, if independently of the document, he has no complete cause of action. (*Broadway and Campbell*, JJ.) RAM SARAN DAS *v.* TULSI RAM.
1922 Lah. 417.

——**S. 91**—*Contract— Writing inadmissible.*

Where the terms of a contract are reduced to writing, and the writing is inadmissible the promisee must lose his remedy. (*Le-Rossignol and Wilberforce*, JJ.) GURUDASS MAL SINGH *v.* ISHAR DAS.
3 Lah L.J. 187=60 I.C. 107=3 U.P.L.R. (Lah.) 8.

——**S 91**—*Contract—To sell—Oral evidence.*

S. 91 is applicable to a written agreement to sell, and excludes oral evidence of such an agreement as well as of what took place at the time of the agreement, to prove the agreement. (*Macnair*, A.J.C.) VYANKATESH *v.* GANESH.
61 I C. 896.

——**S. 91**—*Contracts.*

Where an agreement to allow defendant to withdraw up to a certain amount was arrived at some days prior to the execution of a document which was executed not as a record of the contract but as a collateral security. *Held*, S 91 does not operate as a bar to the admission of the oral evidence which is on the record. (*Fawcett*, J.C. *and Kemp*, A.J C.) LOKUMAL TARACHAND *v.* THE SIND BANK.
57 I.C. 394=13 S.L.R. 180.

Decree of Court.

——**Ss. 91 and 92**—*Decree of Court—Any matter required by law to be reduced to the form of a document.*

Any matter required etc., in S. 91 does not cover the case of a decree; so oral evidence may be admissible of an alleged oral agreement varying the terms of a decree. (*Mookerjee and Beachcroft*, JJ.) DEBENDRA NARAYAN SINHA *v.* SOUNDARA MOHAN SINHA.
24 I.C. 391.

EVIDENCE ACT (I of 1872), S. 91—Lease.

Deposition of Witness.

——**S. 91**—*Deposition of witness—Other evidence inadmissible.*

The record by Court of a deposition is the only evidence admissible of the statements alleged to have been made by the witness and if it is not shown to have been read out to the witness he can't be convicted of perjury. (*Sadasiva Iyer and Napier*, JJ.) *In re*, NALLURI CHENCHIA.
42 Mad. 561=20 Cr. L J 379=50 I.C. 987=36 M.L.J 296=9 L W. 319=(1919) M.W.N. 183=25 M L.T. 366.

——**S. 91**—*Deposition of witness — Not read out or explained to witness—Admissibility.*

Even if S. 91 of the Evidence Act be construed so as to apply to the deposition of a witness, if merely excludes oral evidence of its contents and does not make the document itself inadmissible nor prevent its being otherwise proved. 45 C. 325, Ref.; 42 M 561, Diss. (*Daniels*, A J.C.) MT. FEROZA JAN *v* MIRZA AMIR ALI.
9 O L J 593=9 O. & A.L.R. 103=24 Cr L J. 781=1923 Oudh 119

——**Ss 91 and 80**—*Deposition of witness—Evidence* aliunde—*Inadmissible.*

Where a deposition is not taken in accordance with S. 360, Cr. P. C, it is inadmissible in evidence and other evidence is shut out by S. 91 of the Evidence Act. (*Maung Kin*, J.) KADIR PAKIRI *v.* EMPEROR.
18 Cr. L J 966=42 I C. 376=11 Bur. L.T. 202.

Intention of parties.

——**S. 91**—*Intention of parties—Extrinsic evidence.*

Under S. 91 no extrinsic evidence can be let in as to the sense in which the words used in a document were understood by the parties. A document shall in cases of doubtful construction be construed strictly against the grantor. The words "up to" or "until" a certain day in a contract may be construed as exclusive or inclusive of the day to which they are applied. (*Greaves*, J.) METROPOLITAN ENGINEERING WORKS *v.* WALTER ENGR. DELIVERER.
45 Cal. 431=45 I.C. 305=22 C.W N. 416.

——**S. 91**—*Intention of parties—Sale—Mortgage.*

No oral evidence is admissiable to prove that a registered deed which purports to be a sale is really a mortgage. (*Maung Kin*, J.) MA PAIK *v.* MA NAVAI PAUK.
34 I C. 183=9 Bur. L.T. 174.

Lease.

——**S. 91**—*Lease — Inadmissible under B T. Act.*

Oral evidence cannot be given of the terms of a sub-lease in excess of the period sanctioned by S. 85, Bengal Tenancy Act, though it is

EVIDENCE ACT (I of 1872), S. 91—Lease.

registered, for it is inadmissible in evidence. (*Fletcher and Richardson*, JJ.) GONESH MOUDOL *v.* THANDA NAMASUNDARAM.
38 I.C. 489=24 C L.J. 589.

———S 91—*Lease — Inadmissible — Oral evidence—Registration Act, S. 49.*

Oral evidence to prove the rate of rent is admissible, when the tenant's *Kabuliat* becomes inadmissible for want of registration. (*Jenkins*, C.J. *and Mookerjee*, J.) AMIR ALI *v.* AYKUP ALI KHAN. 41 Cal. 347=
25 I.C. 509=19 C.L.J. 428.

———S. 91—*Lease—Oral evidence.*

Where a written rental agreement is inadmissible in evidence, oral evidence, thoub not admissible to prove the terms of the tenancy or period of the lease is still admissible to prove that the relationship of landlord and tenant exists between the parties. (*Sadasiva Aiyar and Hinny*, JJ.) CHAVALI SUBBANNA *v.* TELLURU VENKATARAYUDU.
27 I.C. 804=28 M.L.J. 361.

———S. 91—*Lease — Unregistered — Admissibility to prove relationship of landlord and tenant.*

Where an unregistered lease is inadmissible in proof, of a lease there is nothing to prevent the evidence of witnesses who speak to the existence of the relationship of landlord and tenant between the parties being admitted. A tenancy can be proved without the lease if there be any, 41 C. 347, Foll. (*Prideaux*, A.J.C.) NAGO *v.* TUKARAM. 49 I.C. 843.

———S. 91—*Lease — Unregistered — Oral evidence.*

No oral evidence can be given to prove the terms of a lease contained in an inadmissible document. (*Mittra*, A.J C.) RAJARAMJI *v* GANESH. 42 I.C. 629.

———S 91—*Lease—Admission of other evidence to prove tenancy.*

Where a tenant as a defence to a suit in ejectment by the landlord sets up a permanent tenancy but does not produce the settlement and bandobast papers, the onus is on the tenant to prove the permanent character of the lease and in view of S. 91 of the Evidence Act, no evidence other than the Settlement papers was admissible to prove the character and terms of the lease. (*Miller*, C. J *and Mullick*, J.) BUDHAN TELI *v.* MADANMOHAN LAL
3 P L.T. 486=1923 P. 111.

License.

———S. 91—*License—Parol evidence.*

The grant of a mere license need not be in writing and may be proved by parol evidence. (*Stanyon*, A.J.C.) NARASINGADAS *v.* RATAN LAL. 34 I C. 471=12 N.L.R. 75.

EVIDENCE ACT (I of 1872), S. 91—Oral Evidence.

Lost Document.

———S. 91—*Lost document—No proof of loss—Admission by deft. of execution but plea of payment—Payment endorsed on document—Plff whether can succeed.*

Where a suit is based upon a lost document the loss of which however the plff. is unable to prove, he cannot succeed on the mere admission by the deft. of execution of the same when it is followed by a plea of payment duly endorsed thereon. (*Johnstone*, J.) ATRA *v.* OHAJU. 12 I.C. 246=49 P.W.R. 1911.

Mortgage.

———S. 91—*Mortgage.*

Where a mortgage by deposit of title-deeds was followed by a writing accompanying deposit unregistered—*held*, that secondary evidence was inadmissible and that the mortgage was unenforceable. (*Macleod and Coyajee*, JJ.) CHUNNILAL SOMESHWER BHATT *v.* VITHAL DAS KARSANDAS. 24 Bom. L R. 502=
1922 Bom. 440.

———Ss. 91 and 92—*Mortgage — Agreement to exonerate one of several mortgagors from personal liability.*

An agreement by which one of several mortgagors procures a release of his own personal liability is admissible in evidence though not endorsed on the back of the mortgage-bond according to its recitals. (*Fletcher and Newbould*, JJ.) JADAR CHANDRA BHATTACHARJEE *v* MAFIJUDDI. 42 I.C. 615.

———S. 91 — *Mortgage — Admissions — Unregistered mortgage—Admission at mutation—Proof of, if can be given.*

An unregistered mortgage, inadmissible in evidence for want of registration, cannot under S. 91 of the Act be proved by an admission at mutation proceedings inasmuch as the section excludes all evidence in proof of the contract except the document itself, 3 N.W.P.H C R. 153 ; 9 M. 142 ; 98 P.R. 1902, Dist. (*Rattigan and Beadon*, JJ.) GUJIRI W/O GOKUL CHAND *v.* SAMANDAR KHAN. 20 I C. 280=
27 P.L.R. 1913.

———S. 91—*Mortgage—Other evidence inadmissible.*

Where the plff. relies upon a mortgage-deed produced by her but not proved she is precluded by S. 91 from giving other evidence of the terms of the transaction. (*Saunders*, A.J.C.) MI NGE MA *v.* NGA TALOK PYO.
29 I C. 607=(1915) 11 U.B.R. 56.

Oral Evidence.

———S. 91—*Oral evidence.*

The rule with regard to writings is that oral of it cannot be substituted for the written evidence of a contract which the parties have put into writing. And the reason is that the writing was tacitly considered by the parties themselves as the only repositary and the appropriate

EVIDENCE ACT (I of 1872), S. 91—Oral Evidence.

evidence of their agreement. (*Lord Carson*). SUBRAMANIAN *v.* M L R.M. LUT CHMAN.
50 Cal 338=38 C L J. 41=
44 M.L J 602=8 L.W. 446=
(1923) M W N 762=28 C.W.N. 1=
1 Rang 66=50 I A. 77=2 Bur. L J. 25=
32 M.L T. 184=25 Bom. L.R. 582=
1923 P.C. 50 (P C).

——— Ss. 91 and 92—*Oral evidence—Admissibility.*

There is no legal objection to the admissibility of oral evidence which is admitted as a natural consequence of the admission of a documentary evidence. (*Jenkins*, C.J. *and Aushtosh Mookerjee*, J.) SHAIKH NURA *v.* BAIKUNTHA NATH RAY. **30 I C 398=**
21 C.L.J. 596.

———S. 91—*Oral evidence of compulsorily registrable but unregistered deed.*

The recitals of a lease are as follows:—"So long as Tajuddin occupies the shop the rent shall not be raised nor lowered nor shall I eject him but in case of his refusal to pay the rent I shall have to turn him out. Accordingly this kirayanama is written for record in case of me." *Held*, it was not a mere memorandum but was the agreement itself entered orally and then reduced to writing and being a lease not limited to a year was inadmissible in evidence if it were not registered and oral evidence could not be adduced thereof. (*Chevis*, A C.J.) KARIM BAKSH *v.* NATHA SINGH.
8 Lah. L.J. 14.

———S. 91—*Oral evidence—Unregistered lease—Inadmissible.*

An unregistered lease is inadmissible in evidence in proof of the tenancy and its existence precludes the parties from giving other oral evidence of its terms. Nor could it be relied upon to support a claim for Specific performance. (*Hallifax*, A.J.C.) CHAGAN LAL *v.* KASHI RAM. **1923 Nag. 76**

———S. 91—*Oral evidence—Deed not produced.*

Where it was contended that the plaintiff, not having produced a certain Bainukasha deed, was not entitled to adduce evidence of the transaction and therefore failed to establish his title:—*Held*, all that S. 91 provides is that when the terms of a contract or of a grant or any other disposition of property, have been reduced to the form of a document, no evidence shall be given in proof of the terms of such a contract, grant or disposition of property except the document itself. This however refers only to the method of proof of the terms of contract, grant or disposition of property. It does not exclude other proof of the transaction itself and this being so, the Courts are entitled to consider the other evidence adduced in proof of the Bainukasha transaction. (*Coutts and Ross*, JJ.) MT. MAKHDUMAN *v.* SAYED ALTAF HUSSAIN.
1922 P. 222.

EVIDENCE ACT (I of 1872), S. 91—Partition.

Partition.

———S. 91—*Partition — Unregistered — Admissibility of.*

The fact of a partition as distinguished from its terms, may be proved by evidence without even the deed of partition itself. Per *Beaman*, J.—A fact, which does not necessarily constitute a term in any real sense, of a contract, grant or other disposition of property may be proved, although the writing in which the terms of the grant or other disposition of property are embodied, cannot be proved for want of registration. (*Scott*, C. J. *and Beaman*, J.) CHOTTALAL ADIT RAM TRAVADI *v.* BAI MAHAKORE. **41 Bom. 466=**
40 I.C. 83=19 Bom. L.R. 322.

———S. 91—*Partition—Proof of fact of.*

S. 91 excludes any evidence other than the inadmissible document of the terms of the disposition of property made by the parties on the occasion to which the document relates but oral evidence is admissible to prove the fact of the separation, 41 Bom. 466. Foll. (*Campbell*, J.) TARSINGH DAS *v.* UTTAM CHAND.
1923 Lah. 392.

———S. 91—*Partition—Oral evidence.*

A partition may be proved by oral evidence though the partition-deed cannot be proved for want of registration. (*Abdul Raoof*, J.) BISHAN DAS *v.* RAM SINGH. **61 I.C. 399=**
3 U.P.L.R. (Lah.) 43.

———S. 91—*Partition—Secondary evidence—Loss of award effecting partition—Admissibility of oral evidence.*

Where an award effecting partition is lost, there is nothing in S. 91 of Indian Evidence Act to prevent one of the parties from proving *aliunde* that a partition did take place but no secondary evidence of the details of such partition can be given. (*Rattigan and Scott-Smith*, JJ.) SUKH DIAL *v.* MANI RAM.
29 P.R. 1915=27 I.C. 489=29 P.L.R. 1916.

———S. 91—*Partition—Absence of registration—Oral evidence—Part performance—Effect.*

Although a document of partition is inadmissible in evidence for want of registration and no oral evidence can be let in to prove the partition, yet if the arrangement has been acted upon and there is part performance by the party seeking relief and he could maintain a suit for specific performance, proof of the arrangement can be allowed. (*Das and Macpherson*, JJ.) NAND LAL MAHTON *v.* DHANUKDHARI MAHTON. **4 Pat. L.T. 657=**
2 P.L.R. (Civ.) 87=1924 P. 244.

———S 91—*Partition—Unregistered deed—Oral evidence—Scope of section.*

A partition can be effected orally, but if the parties put into writing but do not register it even though the properties are worth more than Rs. 100, it is wholly inoperative. S. 91 of the Evidence Act precludes oral evidence being

EVIDENCE ACT (I of 1872), S 91—Police Diary.

given in such a case. It is true that relationship such as partnership, landlord and tenant, etc., may be proved apart from documents embodying such relationship, but not so the facts and terms of a partition deed. (*Duckworth and Pratt*, JJ.) MG. PO. LUN *v.* MA E MAI
1923 Rang. 57.

Police Diary.

———S. 91—*Police diary—Entries in—Oral evidence.*

S. 91 has no application to matters entered in a special diary under S. 172 of the Cr.P.C. Oral evidence is admissible to prove statements made to the Police by witnesses who heard them made, 19 A. 390, Expl. (*Parlett*, J.) NOOR MAHOMED *v* EMPEROR.
18 Cr. L J. 1022=42 I.C. 766=11 Bur. L.T. 138.

Power-of-attorney.

——— Ss. 91 and 92—*Power-of-attorney—Right of third party to adduce other evidence of the power.*

There is no legal rule that the only evidence of an agent's authority admissible in evidence is a written power-of-attorney. The fact can be established by evidence *aliunde*, and, so far as third parties are concerned more so because the agent was appointed under a written document executed by the principal. (*Reid*, C.J. *and Rattigan*, J.) NANAKCHAND *v.* MUHAMMAD AFZAL. **33 P.R 1913=11 P.L R. 1913=16 I.C. 950=279 P.W.R. 1912.**

Promissory Note.

———S. 91—*Promissory note—Pre-existing debt—Suit on original consideration.*

If a creditor has a cause of action for the recovery of money for which his debtor has executed a promissory note, separate from and independent of the note he can recover upon such cause in case the note for any reason as for want of being properly stamped cannot be put in evidence, 34 A. 158, Foll. (*Ryves and Daniels*, JJ.) KASHI PRASAD *v* PANNA LAL.
L.R. 4 A. 377=1923 All. 529 (2).

———S 91—*Promissory note—Unstamped—Suit on original consideration.*

Where a hundi is unstamped and therefore inadmissible in evidence, a decree may be given, on the original consideration if it is admitted in the pleadings and if the claim on the original consideration is in time. (*Chatterjea and Newbould*, JJ.) GOBINDA KUMAR *v.* RAM CHANDRA. **51 I.C. 946=29 C L J. 508.**

———S. 91—*Promissory note—Claim for interest under inadmissibile pronote—Damages in lieu of interest.*

Where a pro-note is in admissible in evidence oral evidence is not admissible under S. 91 of the Act to prove the terms of the contract for payment of interest and therefore the claim for interest under the document cannot be maintained but the Court may allow damages in lieu of interest. (*Mookerjee and Beachcroft*, JJ.) RAM BAHADUR *v.* DASURU RAM.
19 I C. 840=17 C.L.J. 399.

EVIDENCE ACT (I of 1872), S. 91—Receipt.

———S. 91—*Promissory note—Hundi insufficiently stamped—Inadmissible in evidence—Rights of creator.*

In a suit for recovery of money advanced on the security of a Hundi it was found that the Hundi was signed shortly after the money was actually paid. The Hundi was insufficiently stamped and therefore inadmissible under S. 35 of the Stamp Act. The plff claimed to recover the money advanced irrespective of the Hundi. *Held*, that the loan was made on the security of the Hundi though the Hundi was actually executed later on, and the plff. had no cause of action independently of the Hundi. The Hundi was inadmissible in evidence under S. 35 of Stamp Act. S. 91 of the Evidence Act was a bar to the reception of secondary evidence and the plff.'s suit was therefore unsustainable. 61 P.R. 1888; 42 P.R. 1895; 66 P.R. 1906, Foll.; 16 1 C. 83, Dis. (*Chevis and Harrison*, JJ.) CHANDA SINGH *v.* THE AMRITSAR BANKING COMPANY. **2 Lah. 330=1922 Lah. 307.**

———S 91—*Promissory note—Unstamped—Inadmissible—Suit on original consideration.*

Where a promissory note is inadmissible in evidence for want of stamp a decree could not be given on the consideration as there was no independent obligation to pay apart from the note. 10 M. 94; 17 M.L.J. 126, Foll. (*Sadasiva Iyer and Spencer*, JJ.) MUTHU SASTRIGAL *v.* VISVANTHA PANDARA SUNNADHI.
38 Mad. 660=14 M.L.T. 520=(1914) M.W.N. 58=21 I.C. 864=26 M L.J. 19.

———S. 91—*Promissory note — Inadmissible in evidence—Original consideration.*

(Per *Curiam Pratt*, J., *dissentiente*).—Where money is lent and a promissory note is given therefor the creditor can sue for the money due as on the original contract of loan if the promissory note cannot be proved. (*Twomey*, C.J., *Ormond Maung Kin and Pratt*, JJ.) MAUNG KYI *v.* MA MA GALE.
12 Bur. L.T. 137=51 I C. 84=10 L.B.R. 56 (F.B.).

Receipt.

———S. 91—*Receipt—If payment can be proved by other evidence.*

Where a receipt granted for payment made is lost the party relying on the payments need not prove the loss of receipt but may prove payments by other evidence. (*Karamat Hussain and Chamier*, JJ.) MUHAMMAD HUSSAIN *v.* AMIR HAIDAR. **13 I.C. 150.**

———Ss. 91 and 92—*Receipt—Unstamped—Proof of pagment by other evidence.*

The mere existence of an unstamped receipt which is inadmissible in evidence does not

EVIDENCE ACT (I of 1872), S. 91—Recitals.

prevent other evidence being given to prove discharge by payment. (*Hallifax*, A.J.C.) RAM PRASAD *v.* NATHU RAM. **1923 Nag 32.**

Recitals.

——··—**S. 91**—*Explanation 3—Recitals in document—Relationship—Oral evidence—Document defining relationship—Gift.*

The fact of the existence of a particular legal relationship may be established by oral evidence though the terms which govern the relationship may be expressed in writing. Though a deed of gift executed by a Mahomedan is inadmissible in evidence for want of registration oral evidence is admissible to show that there has been a valid gift under Mahomedan Law. (*Lindsay*, J.C.) ALI BAKHSH *v.* GHAUSAI. **18 O C. 122=28 I.C. 180=2 O.L J. 97.**

Registration endorsement.

——**Ss. 91 and 92**—*Registration indoresement.*

A statement recorded by the Sub-Registration Officer on the back of the document cannot be taken as a part of the document and cannot be admitted in evidence under Ss. 91 and 92 of the Evidence Act. (*Chamier*, J.C.) MUNI *v.* SHIAM BEHARI. **10 I.C. 718=14 O.C. 80**

Sale.

——**S. 91**—*Sale—Sale-deed not produced—Oral evidence.*

The purchaser of a land under a registered sale-deed must prove his title by producing the sale-deed or lay the foundation for the reception of secondary evidence. No oral evidence of the sale is admissible under S. 92. (*Sharfuddin and Coxe*, JJ.) SAFAR ALI *v* MOHESH LAL CHOWDHURY. **54 I C 936=23 C L.J 122.**

——**S. 91**—*Sale-deed—Non-registration—Suit for specific performance—Inadmissibility of document.*

Where the sale-deed is not registered, the vendee cannot rely upon it as evidence even in a suit for sp. performance. (*Chevis and Abdul Raoof*, JJ.) MUSSAMMAT PARMESWARI DEVI *v.* AUTAR SINGH. **4 U.P L.R (L) 59.**

——**S. 91**—*Sale—Unregistered sale for less than Rs* 100—*Delivery of possession.*

Plff can rely upon oral sale accompanied by delivery of possession in a case where a sale-deed was executed but not registered as the consideration was less than Rs. 100. (*Kanhaiya Lal*, A J C.) SHEO DAYAL *v.* RAJA MAHOMED ABDUL HASAN KHAN. **38 I.C. 671=20 O.C. 33.**

Transfer of Property.

——**S. 91**—*Transfer of property—Oral evidence.*

Where a disposition of property is not required by law to be in writing and no question arises as to the terms of such a dis-

EVIDENCE ACT (I of 1872), S. 92—Ambiguity.

position. Oral evidence is admissible to prove the existence of such a disposition. (*Kanhaiya Lal*, A J C.) SHEO DAYAL *v.* MUHAMMAD ABUL HASSAN KHAN. **38 I C 671=20 O.C. 33.**

——**S 92.**

AMBIGUITY.
ARBITRATION.
COMPROMISE.
CONNECTED DOCUMENT.
CONSIDERATION.
CONTEMPORANEOUS DOCUMENT.
CONTRACT
DECREE OF COURT.
DESCRIPTION OF HOUSE.
DHARPUTNI LEASE.
DISCHARGE.
DOCUMENT SILENT AS TO INTEREST.
EVIDENCE OF CONDUCT.
EXHAUSTIVE.
FRAUD
ILLEGALITY OF CONSIDERATION.
IMPLIED CONTRACT.
INTENTION OF PARTIES.
INTEREST.
INTERPRETATION OF DOCUMENTS.
KABULIYAT.
LANDLORD AND TENANT.
LEASE
MISTAKE.
MORTGAGE.
NEGOTIATIONS.
ORAL AGREEMENT.
PAROL AGREEMENT.
PLAIN DOCUMENT.
PROMISSORY NOTE.
RECITALS.
RELINQUISHMENT.
SALE
SCOPE.
TERMS OF THE CONTRACT.
THIRD PARTIES.
TRADE USAGE.
USAGE.
VARIATION OF TERMS.

Ambiguity.

——**S 92**—*Ambiguity—Agreement of sale—Facts leading up to sale—Extrinsic evidence.*

Where there are conflicting statements as to the circumstances leading up to the execution of an agreement to sell, and there is difficulty in reconciling the different statements regarding the property sold extrinsic evidence is admissible to explain the facts. (*Mr. Ameer Ali.*) HUSSONALLY SULLEMANJI *v* TRIBHUVANDAS MANGALDAS. **(1920) M W N. 716=3 U.P.L.R. (P C) 1=61 I.C. 361=28 C W.N. 383 (P C.).**

——**S. 92, proviso (6)**—*Ambiguity—Evidence of conduct of parties—Admission.*

Where a deed of transfer is ambiguous as to the nature of interest in the property it purports to convey, extrinsic evidence (including evidence as to the course of dealing with

EVIDENCE ACT (I of 1872), S. 92—Ambiguity.

the property) may be taken into consideration in construing the deed. If there is careless admission as to the nature of certain property both sides can give evidence as to the person who made the admission with the incidents of the property when he made the statement. (*Chatterjee and Panton*, JJ.) DINABANDHU NANDI CHOUDHURY *v* MANNULAL PARIK. 52 I C. 443.

——S. 92 (2)—*Ambiguity—Oral evidence—Admissibility of.*

A mortgage-bond contained the following stipulation for interest. 'I have borrowed from you Rs. 300.....I shall pay.....for the aforesaid sum every year.....calculating interest at ten *kalams* of paddy every year'. On a question arising as to whether ten *kalams* were the interest on Rs. 100 or all the 300 rupees. *Held*, that the document was silent as to the basis on which calculation was to be made and therefore oral evidence was admissible under proviso 2 of S. 92 of the Evidence Act, to show what the parties really intended. (*Olafield and Seshagiri Aiyar*, JJ.) MUTHUSAWMI AIYAR *v* VARADA VYROYAN.
(1920, M W.N. 239=11 L W 352=
56 I.C 476=21 M.L.T. 309.

——S. 92(6)—*Ambiguity—Explanation.*

In a suit upon a promissory note executed by the defendant in favour of the plaintiff bank, it appeared that the bank used to fix a period for payment and that the defendant in his application for the loan in a printed form added 'six months' period, the officer of the bank accepted the application. *Held*, that the application form, and endorsement thereon were admissible for fixing the date of payment and that the suit was governed by Art. 69 or 80 of the Limitation Act, the starting point of limitation being six months after the date of the note. (*Seshagiri Aiyar and Moore*, JJ.) PONNUSWAMI CHETTY *v.* THE VELLORE COMMERCIAL BANK, LTD. 38 M L J 70=
27 M.L.T. 81=(1920) M W N 76=
56 I.C. 384=11 L.W. 28.

Arbitration.

——S. 92, proviso (2)—*Arbitration—Oral agreement—Decision of majority is to be binding—Proof of.*

An agreement in writing to refer certain disputes to the arbitrators was made and the award of the arbitrators was stated to be binding on the parties to the reference. *Held*, that evidence of an oral agreement to the effect that the parties agreed to be bound by the decision of a majority of the arbitrators was inadmissible under S. 92, proviso (2) of the Evidence Act. (*Kanhaiya Lal*, A.J.C.) GUR BAKSH SINGH *v.* CHUTTA SINGH.
47 I.C. 960=5 O.L.J. 471.

Compromise.

——S. 92, proviso (2)—*Compromise decree—Part of agreement, not entered in compromise deed.*

EVIDENCE ACT (I of 1872), S. 92—Compromise.

Where a part of the agreement between the parties is not entered in the compromise deed, the case is not covered by S. 92, proviso 2 of the Evidence Act and the parties could not adduce oral evidence of the same. (*Richards*, C.J. *and Banerji*, J.) ABDUL HAMID *v.* ABDUL MAJID. 21 I.C. 305=11 A.L.J. 710.

——S. 92—*Compromise—Addition of terms—Written agreement—Oral evidence.*

Where the agreement of compromise by which the plaintiff withdrew a criminal case did not refer to an agreement which the plaintiff was putting forward. *Held*, that plaintiff was adding a new term to the agreement which settled the terms of the compromise which he could not do under S. 92. (*Scott*, C.J. *and Beaman*, J.) JAGJIVAN MULJI *v.* MATHJI JAGESHWAR. 32 I C. 938=
18 Bom. L.R. 90.

——S. 92—*Compromise—Additional evidence if legally admissible.*

An order of Court adjourning a case and incidentally making a note as to the fact of an agreement made out of Court between the parties as a ground of adjournment is not a record of the terms of the compromise; and additional evidence to add to the terms of the compromise is admissible. S. 92 does not bar oral evidence in such a case. (*White*, C.J. *and Sankaran Nair*, J.) SAMBANDA MUDALIAR *v.* CHINNASAWMI SAH. 29 I.C. 860.

——S. 92—*Compromise—Oral evidence—Independent agreement.*

Where a litigation is compromised by the parties by means of a written agreement 'of all matters in dispute' it is not open to the parties to tender oral evidence of separate agreement as not having been included in the compromise though concerning a matter dealt with by it. (*Benson and Sankaran Nair*, JJ.) RAJARAM RAO *v.* TULJARAM RAO. 17 I.C. 43.

——S. 92—*Compromise—Evidence of adjustment.*

S. 92 of the Evidence Act does not bar the oral evidence to prove an agreement by way of adjustment of a decree as the R. 2 of O. 21, C.P. Code, contemplates the taking of evedence to prove the adjustment. (*Mitra*, O J.C. *and Hallifax*, A.J.C.) RANGLAL *v.* CHUNNILAL.
60 I.C. 316=16 N.L.R 204.

——S 92—*Compromise—Decree recorded as satisfied—Oral evidence of contract—C.P. Code, O. 21, R. 2.*

The fact that the liabilities under the decree form the consideration for a compromise, did not prevent that compromise from being a new and independent contract which might form the basis of a suit which might be proved by oral evidence and such evidence would not amount to 'contradicting, varying, adding to or subtraction from' the terms of the decree. (*Mitra*, A.J.C.) RATANLAL *v.* ANWAR KHAN.
53 I.C. 527.

EVIDENCE ACT (I of 1872), S. 92—Connected Document.

Connected document.

———S. 92—*Connected documents — Single transaction.*

Whether two documents executed at an interval of two days by the same parties evidence a single transaction or two separate independent transactions, should be decided only on a perusal and construction of both and by contemporaneous surrounding circumstances but no oral evidence of intention is admissible. (*Sadasiva Aiyar and Spencer*, JJ.) PALANIAPPAN *v.* SUBBARAYA GOUNDAN.

14 M.L.T. 379=(1914) M.W.N. 222=23 I.C. 4=1 L.W. 80.

Consideration.

———S. 92 — *Consideration—Sale-deed—Evidence that no consideration was intended to pass.*

Evidence is admissible to show that consideration for a deed of sale was not intended to pass and that it was a deed of gift. (*Lord Macnaghten.*) HANIFUNNISSA *v.* FAIRUNNISSA.

38 All. 340=15 C.W.N. 521=8 A.L.J. 378=13 C.L.J. 510=13 Bom. L.R. 391=10 M.L.T. 23=(1911) 2 M.W.N. 370=11 I.C. 398=21 M.L.J. 1126 (P.C.).

[On appeal from 27 All 612.]

———S. 92—*Proviso 3 — Consideration — Plea of, want of.*

It is open to a person who admits the execution of a promissory-note to plead want of consideration therefor. (*Ryves*, J.) LALLU MAL *v.* REOTI RAM.

46 A. 679=21 A.L.J. 669=9 O. & A.L.R. 674=1924 A. 70.

———S. 92—*Conzideration—Proof that the consideration was less than that recited in the deed.*

Evidence to show that the price for a sale of property is less than the amount recited in the sale-dead is inadmissible. 38 M. 514, followed. (*Walsh*, J.) LALA SINGH *v.* BASDEO.

1923 A. 429 (2).

———S. 92—**Proviso (1)**—*Consideration—Vendee's right to prove consideration was less than shown in deed.*

If one party proves that the consideration shown in the sale-deed did not pass, the case is within proviso 1 of the section ; the other party can give oral evidence to prove the real consideration. 33 A. 340 (P.C.), Foll.; 12 M.I.A. 157 ; 11 Cal. 486 ; 3 Bom. 159 ; 18 A. 168 ; 15 C.W.N. 158 ; 9 I.C. 161 ; (1907) A.W.N. 181; Dist. (*Banerji and Chamier*, JJ.) CHUNNI BIBI *v.* BASANTI BIBI.

36 All. 337=24 I.C. 661=12 A.L.J. 969.

———S. 92— *Consideration —Sale-deed — Variation of terms.*

Though want of consideration or failure of consideration or difference in the kind of consideration may be proved evidence to vary the

EVIDENCE ACT (I of 1872), S. 92—Consideration.

amount of consideration in a registered sale-deed is inadmissible. If such a course were permissible the protection intended by the Legislature to be afforded by the adoption of the rule embodied in S. 92 of the Evidence Act would be completely nullified. (*Mookerjee and Chotzner*, JJ.) ANNADA CHARAN SIL *v* HARGOBINDA SIL.

27 C.W.N. 496=37 C.L.J. 552=1923 Cal. 570.

———S. 92, Proviso (1)—*Consideration—Recital—Evidence to the contrary.*

Either party to a document may show that there was in fact no consideration for a document though consideration was recited therein or that the consideration was different from what was stated in the deed, 3 Bom. 159, foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA.

25 C.W.N. 942=66 I.C. 694=34 C.L.J. 333.

———S. 92—*Consideration — Promissory note—Recital as to consideration—Proof of payment of a different kind, whether admissible.*

Under S. 92 the parties to an instrument can show that the special consideration mentioned in the document did not really pass between them, 21 I.C. 458, Dist. ; 32 A. 113 ; 11 I.C. 398 (P.C.); 24 I.C. 661, Foll. (*Seshagiri Aiyar*, J.) NARA REDDIAR *v.* DORAISWAMI REDDI.

(1916) M.W.N. 474=31 M.L.J. 96=35 I.C. 301=3 L.W. 589.

———S. 92—*Consideration — Endorsement on promissory note—Presumption—Oral evidence, whether admissible to prove contract between parties.*

As between an endorser and an endorsee of a promissory note the endorsement is presumed to be for the consideration recited, but that presumption will not make it 'a contract in writing' within S. 92, so as to exclude oral evidence to prove what the consideration for the endorsement really was. (*Phillips*, J.) AYYADORI AIYAR *v.* SIVARAMA PATTAR KARIKAR.

32 I.C. 233.

———S. 92, proviso (4)—*Consideration—Portion not paid—Letter undertaking to give credit for interest—Admissibility.*

At the time of execution of an usufructuary mortgage-deed, a portion of the consideration was unpaid and the mortgagee passed an unregistered letter undertaking to give credit for interest on the sum if unpaid within ten days. *Held*, in a suit for redemption that the letter being unregistered was not admissible in evidence as it modified the terms of the mortgage-deed; but that a separate suit might lie for the amount due under the letter. (*Sankaran Nair and Spencer*, JJ.) ALLAMSETTI APPALA SURYANARAYANA *v.* PEELEEKHANA VENKATASIVA RAO PANTULU

28 I.C. 186=2 L.W. 225.

———S. 92, provisos (2) and (3)—*Consideration for sale—Variation of.*

Where a sale-deed stated Rs. 35,000 as consideration, evidence of an oral contract fixing

EVIDENCE ACT (I of 187 , S. 92—Consideration.

the consideration at Rs. 35,000 and the discharge of a mortgage for Rs. 1,000 is not admissible under proviso 2 or 3 of S. 92 of the Evidence Act. (*Ayling and Tyabji*, JJ.) RAMAKRISHNA AIYAR *v.* ADITYAM AIYER.
(1913) M.W.N. 850=21 I.C 463=
14 M.L T. 385.

——S. 92—*Consideration—Term of the contract—Variance of*,

If a sale-deed recites as consideration a cash price of Rs. 35,000, evidence of an oral agreement that the consideration was really Rs. 36,000 cannot be let in, as the amount of sale price is a term of the contract and evidene cannot be admitted to vary it. (*Ayling and Tyabji*, JJ.) ADITYAM AIYAR *v.* RAMAKRISHNA AIYAR. 38 Mad. 514=(1913) M.W.N. 847=
14 M.L.T. 382=21 I.C. 458=25 M.L.J. 602.

——S. 92—*Consideration—Non-payment—Oral evidence.*

In the case of a deed of sale vendors may prove want of consideration and oral evidence is admissible under S. 92 though contradictory to a written document. (*Prideaux*. A. J. C.) MOTIRAM *v.* RADABAI. 65 I.C. 53.

——S. 92—*Consideration—Failure of—Admissibility of evidence.*

In a redemption suit defendant should be allowed to bring evidence to show that the mortgage was fictitious. (*Lindsay*, J. C.) SAHEB BAKSH SINGH *v.* MOHAMMAD ALI.
58 I.C. 115=7 O L.J 389.

—— S. 92—*Consideration—Evidence that consideration was advanced by person other than payee, whether admissible.*

Evidence to show that consideration for a pro-note was advanced by some persons other than the payee is inadmissible under S. 92 of Evidence Act. (*Pratt*, J.C.) MAUNG SAW *v.* INGRASWAMI. 56 I.C. 259=
(1919) 3 U B R. 200.

——S. 92—*Consideration—Oral evidence to vary recitals.*

Oral evidence is admissible to prove that a higher price was paid for a sale than is evidenced by a sale-deed itself. (*Mc Coll*, A.J.C.) MI SHAW MYIN *v.* MI SHEVE THIN.
15 I.C. 919=(1912) 1.U.B.R 125.

Contemporaneous Document.

——S 92—*Contemporaneous documents—Admissibility.*

If a contract is based on two documents, executed contemporaneously, the defendant in a suit on one of them is entitled to show the contemporaneous execution of the other. A sued B on a pro-note payable on demand. B pleaded a contemporoneous agreement of its payment by instalments. *Held*, he could give evidence of the existence of the contempo raneous agreement. (*Parlett*, J.) NAGARDAS *v.* MOSES S. AROKEE. 12 I.C 896=
4 Bur. L T. 136.

EVIDENCE ACT (I of 1872), S. 92—Contract.

Contract.

——S. 92 (2)—*Contract—Evidence of collateral warranty is admissible.*

Where the plaintiff purchaser of a motor car alleged in his plaint that there was an express warranty that the car was a new car and in perfect working order but there was no such warranty in the written agreement. *Held*, that evidence of such a express collateral warranty would be admissible, under S. 92, proviso (2). (*Pratt*, J.) HURBUT JOHN AMIES *v* JAL P. VIRJI. 25 Bom L.R. 778=1924 Bom. 41.

——S. 92, provisos (3) and (4)—*Contract—Registered contract.*

Oral evidence of modifications of a registered contract by an unregistered writing is inadmissible. (*Ried*, C.J.) SHER MUHAMMAD *v.* NIKKA MAL. 17 I C 362=21 P.L.R. 1913.

——Ss. 92, 93 and 97—*Contract for sale—Evidence to prove identity of vendees.*

Where a vendor agrees to sell land to several named persons and in drawing up the agreement of sale the name of one person is mentioned and without naming the rest the word "others" is used, there is nothing in the Evidence Act to prevent evidence from being let in as to the persons in whose favour the conveyance is to be executed. (*Kumaraswami Sastri and Deva Doss*, JJ.) VEDA MURTHI MUDALIAR *v.* JWALAPURAM RAGHVACHARLU.
42 M L J 475=
15 L.W. 371=(1922) M.W.N. 185.
30 M L.T. 177 (H.C)=1922 Mad. 100.

——S. 92, proviso (4)—*Contract—Rescission of contract.*

Where a lease was given by plaintiff to defendants on a low rent as defendant promised to procure a loan for plaintiff and an agreement was executed as part of the contract by which the defendant agreed to cancel the lease deed on failure to procure the loan. *Held*, that it, was outside the operation of S. 92, Evidence Act, whether it be regarded as itself the contract or as evidence of an oral agreement to the same effect. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) (JAGANNADHA RAJU *v.* RADHAKRISHNIAH. 30 M.L J. 302=
32 I C. 941=(1916) 1 M.W.N. 129.

——S 92—*Contract in writing—Suit on promissory note — Collateral agreement of time.*

An agreement in writing postponing the time for payment is a valid and enforceable agreement and time runs from the expiry of the agreement. (*Wallis*, C.J., *Abdur Rahim*, *Seshagiri Aiyar*, *Sadasiva Aiyar and Napier*, JJ.) A T S.A. ANNAMALAI CHETTY *v.* S.V. VELAYUDU NADAR AND SUNDARA NADAR.
39 Mad. 129=3 L.W. 38=
19 M L T. 62=30 M L J. 51=
32 I.C. 869=(1916) M.W.N. 93 (F.B.).

EVIDENCE ACT (I of 1872), S. 92—Contract.

———S. 92, proviso (2)—*Contract—Scope of.*

Where the plaintiff's evidence proved that the written agreement about supply of consignments by defendant was incomplete and that there was a supplementary oral agreement. *Held*, it would not be inconsistent with the terms of the document that there should have been an agreement that the consignments should be sent when the plaintiff ordered or requested that they should be sent and that the defendant was not bound to despatch consignments without definite orders. (*Batten*, J.C.) SETH LAXMICHAND *v.* SHAIKH SHAHABUDDIN. **1923 Nag 46.**

———S. 92, proviso (6)—*Contract reduced to writing—Relation to existing facts—Pro-note and memorandum—Agreement not to sue till defendant succeeded in an action—Extrinsic evidence, admissibility of.*

Where a contract is reduced to a document it must be construed on a consideration of the document itself, with only such extrinsic evidence as would show the relation of the written language to existing facts, 22 A. 149 (P.C.), Foll. Defendant executed a pro-note to plaintiff for amount received as expenses of an appeal to which he was a party respondent; simultaneously with the pro-note, defendant gave a note to the plaintiff stating that the pro-note was executed in consideration of plaintiff's for bearing to sue on it till the appeal was decided. It was admitted that all parties had great hopes of defendant's success in the appeal and it was understood that plaintiff was to be repaid out of the amount that defendant's opponent had deposited in Court as security for costs of the appeal. *Held*, that construing the documents under the said circumstance, plaintiff's liability did not depend on the result of the appeal. (*Fox*, C.J. *and Twomey*, J.) EBRAHIM GULAM ARIFF *v.* A.K.A M. CHETTY FIRM. **36 I.C. 597.**

Decree of Court.

———S. 92—*Decree of Court—Oral agreement in discharge of—Evidence if admissible.*

Per *Walsh*, J—Evidence of an oral agreement substituting a new executory contract in lieu of, a decree is inadmissible. (*Piggott and Walsh*, JJ.) LACHMI DAS *v.* BABAKALI KAMLI WALA RAM NATH. **44 A. 268= 20 A.L.J. 65=1922 All. 13= L.R. 3 A. 61.**

Description of House.

———S. 92, proviso (6)—*Description of house and site—Oral evidence.*

A sale-deed purported to convey an upstair house standing on a certain site, which was also described and conveyed. The vendor had no upstair house on that site but had one on the opposite side of the same street. *Held*, that parol evidence was admissible to show that the house intended to be conveyed was the latter upstair house. (*Benson and Miller*, JJ.) ANNATHURI AYER *v.* RAMANUJA CHARIAR. **22 M.L.J 411=16 I.C. 223= (1912) M.W.N. 402.**

Dharputni Lease.

———S. 92 (4)—*Dharputni lease—Rent reduced by subsequent letter—Payment for years—Effect of.*

Where after the execution of the Dharputni lease which fixed a certain amount as rent the landlord reduced the rent payable by the lessee by a subsequent letter and the lessee paid at the reduced rate for more than 30 years. *Held*, that the landlord's transferee could not claim at the high rate. (*Chitty and Chatterjee*, JJ.) RAJ KUMAR SARKAR *v.* RAJANI KANTA CHAKRAVARTI. **13 I.C. 449.**

Discharge.

———S. 92—*Discharge—Variation of terms—Subsequent oral agreement—Usufructuary mortgage.*

An agreement between a mortgagor and the usufructuary mortgagee that a property not mortgaged shall be given possession to the mortgagee and that the profits should be applied towards the principal, is admissible in evidence. (*Griffin*, J.) BEHARI *v.* SHIB SAHAI. **18 I.C. 324.**

———S. 92, proviso (4)—*Discharge—Registered bond—Agreement to take less in satisfaction.*

A creditor can sue on his original registered bond which cannot be varied by an oral agreement to take part satisfaction, for until it is made and the creditor remits the balance, the original contract remains intact. (*Holmwood and Chapman*, JJ.) KESHAB LAL SHAHA *v.* HOSSEIN-UD-DIN. **18 I.C. 817.**

———S. 92—*Discharge—Oral evidence that payment made in mode different from that mentioned in document, if admissible.*

The only thing laid down by S. 92 is that the terms of the contract may not be varied or substracted from or contradicted and not that no statement of facts in a written statement may be contradicted. 22 C. 370; 9 A. 392, Rel. Therefore oral evidence to prove that certain sums payable as profits to a mortgagor have been paid not in cash as required by the document but in another mode is admissible. (*Mookerjee and Carnduff*, JJ.) RAM AWATWAR *v.* TULSI PRASAD SINGH. **16 C.W.N. 187=11 I.C. 713=14 C.L.J. 507.**

———S. 92—*Discharge—Promissory note payable on demand—Oral agreement for a different mode of discharge.*

Where a promissory note is payable on demand, an oral agreement inconsistent with the express terms of contract is inadmissible in evidence. (*Martineau and Abdul Quadir*, JJ.) BHARAT NATIONAL BANK *v.* MOHAN LAL. **63 I.C. 748.**

EVIDENCE ACT (I of 1872), S. 92—Discharge.

——— S. 92—*Discharge—Oral—Remission—Registered lease.*

An intimation from the landlord that the reduction hitherto allowed would cease after the date of the letter, discharges the tenant from paying the contract rate for a particular period. No consideration is necessary for this remission and does not contravene S 92. (*Ayling and Seshagiri Aiyar*, JJ.) MAHARAJA OF BOBBILI *v.* RANGU APPALA NAIDU.
32 I.C. 703 = (1916) M.W.N. 149.

——— S. 92—*Discharge — Mortgage — Oral sale for what purposes admissible.*

Per *Phillips*, J. (*Spencer*, J. *dissenting*), An oral sale following a mortgage is not an agreement modifying or rescinding the mortgage but is one discharging the mortgage and although it does not effect a legal transfer of the property, yet there is nothing in S. 92, Evidence Act to exclude evidence of the transaction as showing discharge of mortgage-debt and as showing the nature of possession by the mortgagee thereafter as owner. 14 C.L.J. 507; 30 M. 211; 26 M. 195; 27 M. 368, Foll.; 37 M. 423, Dist. (*Spencer and Phillips*, JJ.) THOTA KURA GOVINDU *v.* PEPAKAYALA MALLAIYA. **2 I C 678.**
[View of Phillips, J. upheld in L P A. Vide (1921) M.W.N. 1]

——— S. 92—*Discharge of mortgage—Invalid oral sale.*

Oral evidence is admissible to prove discharge of a mortgage by payment of money or by receipt of profits, but not to prove a discharge by an invalid oral sale of the equity of redemption in a portion of the mortgage property in discharge of the mortgage-debt. (*Miller and Sadasiva Aiyar*, JJ.) ARIYAPUTHIRA *v.* MUTHUKUMARASWAMY. **37 Mad 423 = 23 M.L.J. 339 = 12 M L T 425 = 15 I.C. 343 = (1912) M W.N. 854.**

——— S. 92—*Discharge — Oral agreement altering mode of payment if acted upon is admissible.*

Where an oral agreement is made which in respect of manner of payment rescinds or modifies a contract, grant or other disposition of property required by law to be in writing and actually written and registered and any payment is made in accordance with such oral agreement, whether in complete or partial satisfaction of the contract, S. 92 does not exclude evidence of that payment but it excludes evidence of the agreement in respect of future payments not in accordance with the terms of the instrument. (*Hallifax*, A.J.C.) SAMBHOO *v.* TIKARAM. **69 I.C. 240.**

——— S. 92—*Discharge—Mortgage—Subsequent oral agreement to be put in possession in lieu of interest.*

An oral arrangement between the parties to a simple mortgage by which the mortgagee is put in possession in order that he may enjoy the profits apply them towards the satisfaction

EVIDENCE ACT (I of 1872), S. 92—Evidence of Conduct.

of interest due, is perfectly legal, inasmuch as such an arrangement does not vary, contradict or add to the terms of the original deed but only provides for the satisfaction of one of its conditions. (*Stuart*, J.C.) JAGAT PAL SINGH *v.* HARNAM SINGH. **30 L J 244 = 34 I.C. 748 = 19 O.C. 166.**

Document silent as to interest.

——— Ss. 92, proviso (6) and 93, III. (b)—*Document not mentioning rates of interest payable, per month or per year—Oral evidence.*

Where a document provides for a rate of interest but does not state whether the interest at that rate is payable monthly or yearly, the intention of the parties must be gathered from the document itself. Oral evidence inadmissible for that purpose under Ss. 92 and 93 of the Evidence Act. (*Jenkins*, C.J. *and Mookerjee*, J.) PROTAP CHANDRA *v* MOHAMED ALI.
41 Cal. 342 = 19 C.L.J. 66 = 20 I.C. 443 = 18 C.W.N. 592.

——— S. 92, proviso (2)—*Document, construction of — Ambiguity — Intention, oral evidence of, whether admissible.*

Under S. 92 (2) oral evidence of the intention of parties is admissible only where some words in the document render it ambiguous and it seems that parties must have intended something different. (*Oldfield and Seshagiri Aiyar*, JJ.) MUTHUSWAMI AIYAR *v.* VARADA VYROYAN. **(1920) M W N. 239 = 11 L W. 352 = 56 I.C. 476 = 27 M.L.T. 309.**

——— S. 92 (6)—*Document silent as to interest — Rate not specified — Evidence — Admissibility.*

A promissory note contained a recital that interest was to be paid at the rate of 1½ per cent but was silent as to whether the rate of interest aforesaid will be per mensem or per annum. *Held* as the document was ambiguous under cl. 6 of S. 92 of the Evidence Act, no evidence could be given to clear up that ambiguity. (*Jwala Prasad and Ross*, JJ.) SARJU SAH *v.* SUKHI LAL. **4 P.L.T. 577 = 1924 P. 96.**

Evidence of Conduct.

——— S. 92—*Evidence of conduct—Conduct of parties to show contract was not intended to be acted upon—If admissible.*

Evidence of acts and conduct of parties to show that certain terms of a contract were never intended to be acted upon from their beginning is not precluded by S. 92 of the Evidence Act. (*Chatterjee and Panton*, JJ.) NARENDRA LAL KHAN *v* BHOLA NATH.
27 C.W.N. 336 = 1923 Cal. 417.

——— S. 92—*Evidence of conduct—Admissibility.*

Evidence of the acts and conduct of parties to a document is not admissible between them to show that the document is really not what

EVIDENCE ACT (I of 1872), S. 92—Evidence of Conduct.

it purports to be. (*J. Walmsley and Ghose, JJ.*) KAMALA KANT *v.* ANANDA CHANDRA.
71 I.C. 1030.

——S. 92—*Evidence of conduct — Ambiguity.*

Evidence of conduct is admissible for construing a document if it is ambiguous in its terms but not otherwise. (*Mookerjee, A.C.J. and Fletcher, J.*) BHABANI NATH ROY *v.* PURNA CHANDRA SARKAR. **25 C W N. 308 = 61 I.C 818 = 33 C L.J. 332.**

——Ss. 92, 94 and 95—*Evidence of conduct — Intention of the parties — Subsequent conduct.*

Subsequent conduct of parties is not admissible to construe a document when its terms are unambiguous. The evidence may be given to explain but not to contradict the doubtful terms of a document. A lease purported to grant a jagiri settlement requiring the lessee to bring the land under cultivation through tenants, together with a certain period of remission during which no rent was to be paid. *Held*, evidence of subsequent conduct of the parties was admissible to make clear the intention and purpose of the tenancy and to determine the status of the tenant. (*Fletcher and Teunon, JJ.*) SECRETARY OF STATE *v.* GOBIND PRASAD BARIK. **39 I C. 934 = 21 C.W N. 505.**

——S. 92—*Evidence of conduct—Intention of parties—Mortgage or sale.*

Evidence of conduct is admissible to show that a document which is apparently a mortgage is in reality a deed of sale. 28 C. 256, Foll. (*D. Chatterjee and Newbould, JJ.*) ALI-SHEIKH *v.* IMAM ALI SARKAR. **35 I.C. 102.**

——S. 92—*Evidence of conduct—If admissible—Lease—Lower rent.*

The allegation that since the execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* can be proved to show that intention of the parties was that the *kabuliyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease. 6 C.W.N. 242, Foll. (*Chatterjee and Newbould, JJ.*) KAILASH CHANDRA SAHA *v* DARBARIA SHEIKH
32 I.C 251 = 20 C.W N. 317

——S. 92—*Evidence of conduct—Registered lease—Rent.*

Variation of rent reserved by a registered lease must be made by a registered instrument and oral evidence be admitted to prove such variation. An agreement is none the less oral because it is to be inferred from the conduct of the parties. 12 C.L.J. 646, Ref. Oral evidence is admissible to prove any variation of the terms, where leases are not registered. (*Chatterjee and Newbould, JJ.*) MANINDRA CHANDRA NANDI *v* DURGA SUNDARI DASIA.
32 I.C. 185 = 20 C.W.N. 680.

EVIDENCE ACT (I of 1872), S. 92—Fraud.

——S. 92—*Evidence of conduct.*

In order to prove evidence of contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted. (*Broadway and Harrison, JJ.*) FITZHOLMS *v.* THE BANK OF UPPER INDIA LTD. **4 Lah. 268 = 5 L.L.J 438 = 1923 Lah. 548.**

——S. 92—*Evidence of conduct—Variation of contract — Lease — Admissibility of oral evidence.*

No oral evidence varying the contract rate of rent payable by a tenant can be allowed where a *muchilika* (lease) is properly executed. The acceptance of less rent for a long period is conduct and is none the less oral evidence. (*Ayling and Seshagiri Aiyar, JJ.*) MAHARAJA OF BOBBILI *v.* RANGU APPALLA NAIDU.
32 I C. 703 = (1916) M.W.N. 149.

——S. 92—*Evidence of conduct — Rate of rent.*

Where the agreement of parties is distinct and clear as to rate of rent the subsequent conduct of the parties is inadmissible in evidence to show that some other rate was intended. (*Sadasiva Aiyar and Hannay, JJ.*) SUBARRAYYA AIYAR *v.* KOLANDAVELU MUDALI. **26 I.C. 958.**

——S. 92—*Evidence of conduct—Intention of parties—Sale and mortgage — Extrinsic evidence of acts and conduct.*

Extrinsic evidence as to acts and conduct of parties to a transaction is admissible to show the real nature of a transaction (*e.g.*, to show that a sale-deed was in reality a mortgage) not by what they intended to do, but by what they actually did, or have been doing. 25 Mad. 7, Diss. from 22 A. 149 P.C. Expl. (*Kanhaiya Lal, A.J.C.*) ABDUL BASIT *v* KHIDA BAKSH.
26 I.C. 717 = 1 O L J. 714.
[This is not law 42 I.C. 642 = 45 C. 320 (P.C.)]

——S. 92—*Evidence of conduct—Document in writing—Evidence inadmissible.*

Evidence of acts and conduct of parties is not admissible to contradict or vary the written terms of an agreement. (*Das, J.*) SUKHAN RAI *v.* CHAKOWRI SINGH. **56 I.C. 752 = 2 U.P L.R. (Pat.) 119.**

Exhaustive.

——S. 92, proviso (1)—*Exhaustive.*

The first proviso to S. 92, Evidence Act, does not exhaust all the circumstances which may invalidate a document or entitle a person to a decree. (*Mookerjee and Richardson, JJ.*) NADIR CHAND SAHA *v.* BIRENDRA NATH DUTT CHAUDHURI. **37 I.C 126 = 20 C.W.N. 1067.**

Fraud.

——S. 92, proviso (1)—*Fraud—Extrinsic evidence—Sales ex facie absolute—Alleged to be a mortgage—Evidence of a matters antece-*

EVIDENCE ACT (I of 1872), S. 92—Fraud, dent, admissibility of—Notice of mortgagor's title.

In a suit for possession of properties sold by appellant to the respondents by deeds purporting to be of absolute conveyance, the former tendered evidence to show that to the knowledge of the respondents they were mortgagees only, the mortgagor not being a party to the conveyances and of acts and conduct of the parties to show that they were intended to operate only as transfers of the mortgage interest. *Held*, that S. 92 of the Evidence Act did not exclude evidence in relation to matters antecedent to the sales in question showing that the respondent took with notice of the mortgagor's title; and that the case must be remitted for retrial. S 92 does not prevent proof of a fraudulent dealing with a third person's property or proof notice of real state of the title. (*Lord Robson.*) MAUNG KYIN *v.* MASHAVESA. **38 Cal 892 = 38 I A. 146 = 15 C.W.N. 968 = 10 M L T. 103 = (1911) 2 M.W N. 80 = 14 C L J 276 = 13 Bom L.R. 797 = 8 A.L.J. 1184 = 21 M.L.J. 1105 = 12 I.C. 39 = 4 Bur. L.T. 273 (P.C.).**

——S. 92 (1)—*Fraud—Deed of sale—Oral evidence to prove a mortgage.*

If the allegation is that the vendor had been induced to sign the sale-deed by fraud inducing him to believe it to be a mortgage by conditional sale Oral evidence is admissible under Evidence Act, S. 92 (1). (*Batchelor and Rao*, JJ.) SOMANA BASAPPA *v.* GADIGEYA KORNAYA. **35 Bom. 231 = 9 I.C. 941 = 13 Bom. L.R. 113.**

——S. 92, proviso (1)—*Fraud—Document obtained by—Oral evidence.*

Where a document is obtained by fraud and comes within proviso 1 to S. 92, of the Act, evidence of a contemporaneous oral agreement contradicting the document is admissible. (*Newbould*, J.) MAHAMAD ARAJ *v* ABDUL GAFUR. **63 I.C. 368.**

——S. 92, proviso (1)—*Fraud—Proof of—Execution of document.*

It is only fraud in connection with the entering into and execution of the document that can be proved by oral evidence, not fraud subsequent to the execution thereof. (*Maung Kin*, J.) MAUNG SHWE HLA *v.* MAUNG CHET. **42 I.C. 113.**

——S. 92, proviso (1)—*Fraud—Third parties.*

S. 92 does not prevent proof of fraudulent dealing with a third person's property or proof of notice that the property purporting to be conveyed in fact belonged to a third person. (*Hartnoll and Ormond*, JJ.) MA SHWE LA *v.* MG KYIN. **26 I C. 111 = 8 Bur. L.T. 104.**

Illegality.

——S. 92 (1)—*Illegality of consideration—Failure—Oral evidence.*

EVIDENCE ACT (I of 1872), S. 92—Intention of Parties.

Where it can be shown that the consideration for a debt was losses in gambling, oral evidence could be let in to prove this fact as it amounts to a want or failure of consideration within S. 92 (1). 9 C. 791, Dist. (*Richards*, C.J. *and Piggott*, .) BAL GOVIND *v.* BHAGGUMAL. **35 All. 558 = 21 I C. 878 = 11 A.L.J. 854.**

Implied Contract.

——S. 92, proviso (5)—*Implied contract—Compound interest—Bankers—Overdraft.*

Under a written contract between a banker and a customer, the latter was to be allowed to overdraw his current account and interest was to be charged at a certain rate per annum, and to be calculated on the daily balance due on the overdraft. The course of business adopted by the bank was that at the end of each month interest was added to the balance then due, and the total carried to the debit of the account. The effect of it was that compound interest with monthly rests was charged and such charge appeared on the face of the customer's pass books. The customer was aware of this mode of computation of interest for several years but he raised no objection thereto. *Held*, the customer had impliedly agreed to pay compound interest with monthly rests, and that S. 92 of the Evidence Act was no bar to the proof of such agreement by the banker. (*John Edge.*) HARIDAS *v.* MERCANTILE BANK. **44 Bom. 474 = 27 M.L.T. 253 = 12 L W. 356 = 38 M.L J. 357 = (1920) M.W.N. 312 = 18 A.L.J. 359 = 22 Bom L R. 545 = 2 U.P.L.R. (P.C.) 78 = 55 I.C. 522 = 47 I.A. 17 (P.C.).**

Intention of Parties.

——S. 92—*Intention of parties—Contract in writing—Construction—Extrinsic evidence.*

The rate of payment for work done under a written contract is determined by the terms of the contract. Extrinsic evidence as to the rate of payment allowed for such work to another contractor or to the same contractor, under another contract is irrelevant and inadmissible. (*Lord Parmoor.*) SETH JASWANT RAI *v.* THE SECRETARY OF STATE. **19 M.L T. 103 = 23 C.L J. 177 = (1916) 1 M.W.N. 201 = 3 L W. 287 = 33 I.C. 924 = 18 Bom. L.R. 355 (P.C.).**

——S. 92—*Intention of parties—Sale or mortgage—Deed apparently a sale-deed—Evidence to show that it was a mortgage admissible.*

Evidence is admissible to show that a sale-deed is not in fact a sale-deed but only a mortgage-deed. S. 92 prohibits only parties. 44 I.A. 236, Foll. (*Macleod*, C.J. *and Crump*, J.) HIRAJI *v* VISHNU. **1923 Bom. 429.**

——S. 92—*Intention of parties—Sale-deed.—Oral agreement to prove it to be a mortgage.*

If the vendor had signed the deed knowing it to be sale-deed but at the same time there

EVIDENCE ACT (I of 1872), S. 91—Intention of Parties.

was an oral agreement by the defendant that he would treat it as a mortgage evidence of such oral agreement is inadmissible under S. 92. 12 Bom L.R 972; 11 Bom L.R 1130; 22 A. 149, Foll. (*Batchelor and Roe*, JJ.) SOMANA BASSAPPA *v* GADIGAYA KORNAYA.

35 Bom. 231=9 I.C. 941=13 Bom. L.R. 113.

——S. 92—*Intention of parties—Lease—Oral evidence if admissible.*

Where there is a document evidencing a transaction of a lease, oral evidence in the shape of admission relating to the transaction of the lease is not admissible. (*Chapman and Newbould*, JJ.) KARTIK MANDAL *v.* RAMA CHARAN MANDAL. **29 I C. 502= 20 C W.N. 182.**

——S. 92—*Intention of parties—Contract—Construction of—Oral evidence to vary terms.*

The rights of the parties to a contract must be determined upon the terms of the contract and oral evidence is not admissible to show that the parties intended to enter into a contract different from that in the instrument itself. 12 C.L.J. 649, Foll. (*Mookerjee and Beachcroft*, JJ.) SASI BHUSAN DEY *v.* UMA KANTODEY. **20 C.L.J. 153=26 I.C. 171= 19 C.W.N. 1143.**

——S. 92—*Intention of parties—Mortgage or sale—Value of property—Consideration of.*

The Court does not infringe S. 92 of the Evidence Act if in order to determine whether a transaction is a mortgage or sale. It looks to contrast between the value of the property and the consideration that actually passed. (*Jenkins*, C.J. *and Mookerjee*, J.) ABDUL GAFFUR *v.* SHEIKH JAMAL.

17 C.W.N. 1038=21 I.C. 90=18 C.L.J. 228.

——S. 32—*Intention of parties—Sale or mortgage.*

Oral evidence cannot be given to show that the parties to a sale deed intended the transaction to be only a mortgage. (*Scott-Smith and Shadi Lal*, JJ.) GHAMAN *v.* KANHIYAMAL. **16 P.W.R. 1915—26 I.C. 426= 121 P.L R. 1915.**

——S. 92—*Intention of parties — Subsequent conduct.*

Evidence of the conduct of the parties subsequent to the execution of the document is admissible to show what the real meaning of the contract was. (*Johnstone and Chevis*, JJ.) BALUKI MAL *v.* C.J. FLOYED.

27 P.R. 1911=10 I.C. 1004= 118 P.W.R. 1911=191 P.L.R. 1911.

——Ss. 92, 93, 95, 96 and 97—*Intention of parties—Extrinsic evidence.*

When the language of a document is clear no evidence is admissible to explain the language; when the words are ambiguous and cannot carry any definite meaning, evidence cannot be given to remove the ambiguity or to supply defects. But where the language of a docu-

EVIDENCE ACT (I of 1872), S. 92—Intention of Parties.

ment is capable of being applied to a number of persons or things and the question in which of these persons or things is intended by the expression, evidence may be given to show what was the thing or who was the person intended. Where a Raja made a trust of his ZAMINDARI together with the buildings thereon and the appurtenances thereto, a question arose whether properties purchased by the Raja prior to the execution of the deed were included. It was held that the subsequent conduct of the Raja was admissible to prove the intention. (*Ayling and Seshagiri Aiyar*, JJ). SUBRAMANI AIYAR *v.* RAJESHWARA SEETHUPATHI. **38 I.C. 627=40 Mad. 1016.**

——S. 92—*Intention of parties—Simultaneous transactions—Mortgage.*

Where the correspondence between mortgagor and mortgagee shows that the transaction was an equitable mortgage oral evidence may be admitted to show that they intended to create equitable mortgage by the deposit of title-deeds and a pro-note. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) MUTHIAH CHETTY *v.* KOTHANDARAMASWAMI NAIDU.

31 M.L.J. 347=(1916) 2 M.W.N. 221= 35 I.C. 864=4 L.W. 472.

——S. 92—*Intention of parties—Extrinsic evidence.*

A mortgage-deed for an amount found due on setting accounts, recited the conditions of repayment by instalments in kind, on failure of any of which, the mortgagor was bound to return the whole with interest at once. *Held*, Per *Curiam*:—Extrinsic evidence of the parties' intention was inadmissible to construe the document. (*Abdur Rahim and Ayling*, JJ.) SURYADEVARA SEETARAMAYYA *v.* SURYADEVARA KOTTAYYA. **35 I.C. 111.**

——S. 92—*Intention of parties—Will—Proof of testator's intention—Surrounding circumstances.*

Oral evidence to prove the intention of the testator is clearly inadmissible but evidence as to all the surrounding circumstances of the testator and beneficiaries would be admissible. (*Bakewell and Spencer*, JJ.) GADIGERE MULA SUNKI REDDI *v.* VENGAL REDDI.

30 I.C. 391.

——S. 92—*Intention of parties—Mortgage—Document found to be a mortgage but not one in terms—Parol evidence.*

If a document not in terms a mortgage is found to be in reality a mortgage, oral evidence of the intention of the parties is inadmissible under S. 92. 22 A. 149 (P.C.), Foll; 25 M. 7 Ref.; 33 A. 340, Expl. and Dist; 8 Bom. L.R. 764, not Appr. (*Miller and Sundara Aiyar*, JJ.) CHELLA VENKATA REDDY *v.* DEVABAKTUMI. **14 I.C. 65=(1912) M.W.N. 164.**

——S. 92—*Intention of parties—Sale or mortgage.*

Where a document is in the form of an outright sale the executant is precluded from

EVIDENCE ACT (I of 1872), S. 92—Intention of Parties.

showing that it is a mortgage, but he is entitled to show that the consideration has not been paid to him and he is entitled to retain possession until the consideration is paid. (*Twomey and Ormond, JJ.*) HARDUM SINGH *v.* MG PO HTU. **45 I.C. 931.**

———**S. 92**—*Intention of parties—Sale or mortgage—Evidence as to.*

Oral evidence cannot be let in to show that a document which purports to effect a sale is really a mortgage unless fraud on the part of the party taking benefit under the deed is sought to be proved. (*Maung Kin, J.*) VENKATACHELLAM *v.* MAUNG TUN E.
43 I.C. 860=12 Bur. L T. 98.

———**S. 92**—*Intention of parties—Fraud—Oral evidence to prove—Representation of intention on which the deed is silent.*

Where the accused obtained as advance from the complainants representing that he had some boat loads of paddy and also executed a promissory note which however did not contain the representation of the accused. *Held*, that oral evidence was admissible to prove the fraudulent intention of the accused as that is not inconsistent with the written agreement. 8 I.C 952, Dist. (*Ormond, J.*) NGA PO YON *v.* MOHR BROTHERS & CO., LTD.
18 Cr. L.J. 50=13 I C. 386=4 Bur. L.T. 279=6 L.B.R. 38.

Interest.

———**S. 92**—*Interest — Mortgage suit—Variation—Adjustment.*

In a mortgage suit, an adjustment can be proved by a defendant but where a rate of interest is fixed in the document, any other arrangement is a variation, which could not be proved under S. 92 of the Evidence Act. (*Newbould and Panton, JJ.*) SAYRAT SAHA *v.* SADFR SAHA. **61 I.C. 241.**

———**S. 92, proviso (2)**—*Interest—Entry in bahi—Oral agreement to pay interest.*

Evidence relating to an oral agreement entered in bahi to pay interest is admissible, 52 P. R. 1911. (*Bevan Pelman, J.*) BHAN-SINGH *v.* GOKAL CHANDI. **53 I.C. 137.**

———**S. 92, proviso (2)**—*Interest—Hatchita silent about interest—Oral evidence.*

Oral evidence of the rate of interest is admissible under S. 92 (2) in a claim based on a hatchita or an informal memorandum of a loan, which is silent as to interest. (*D Chatterjea and Newbould, JJ.*) NABIN CHANDRA NATH *v.* DEBENDRA MOHUN. **36 I.C. 612.**

———**S. 92, proviso (2)**—*Interest—Promissory note silent as to—Contemporaneous agreement—Admissibility.*

Where a promissory note is silent as to interest S. 92, proviso (2) bars the admission of any evidence to prove the contemporaneous

EVIDENCE ACT (I of 1872), S. 92—Interest.

oral agreement to pay interest. But where the defendant admits that he agreed to pay a certain rate, effect may be given to such admission. (*Jenkins, C.J. and Woodroffe, J.*) LACHMI CHAND JHOWAR *v.* HAMENDRA PRASAD GHOSH. **26 I.C. 936=18 C.W N. 1260.**

———**S. 92, proviso (2)**—*Interest—Promissory note silent—Contemporaneous oral agreement—Whether provable.*

A contemporaneous oral agreement as to interest is not admissible under S. 92 of the Act in a case where the promissory note is silent as to interest, 29 A. 33 (P.C.), Ref. (*Chitty, J.*) LACHMI CHAND JHOWAR *v.* HAMENDRA PRASAD GHOSH.
26 I.C. 736=18 C.W N. 1260.

———**S. 92, proviso (2)**—*Interest—Hundi—Evidence, oral.*

Where a Hundi does not provide for interest, no evidence of any separate oral agreement therefor, could be adduced. 29 A. 33 P.C., Ref. to; 10 I.C. 315, Foll; 9 C.L.R 301. Diss; 12 C.L.R. 163, Not foll. (*Kensington, O.C.J. and Bsadon, J.*) RAM GOPAL *v.* SITA RAM.
268 P.L R. 1913=20 I.C. 319=226 P.W.R. 1913.

———**S. 92, proviso (2)**—*Interest—Negotiable Instrument.*

When a suit is based on a Negotiable Instrument which is a document of a formal character the existence of a separate oral agreement as to any rate of interest on which the instrument is silent cannot be proved as proviso 2 to S. 92, Evidence Act does not apply to the case. (*Rattigan and Shah Din, JJ.*) KISHORE CHAND *v.* GURDITTAMAL.
168 P L R. 1911=52 P.R 1911=10 I C. 315=162 P.W.R. 1911.

———**S. 92, proviso (2)**—*Interest—Promissory note silent—Oral agreement to pay interest—Negotiable Instrument Act, S. 80—Effect of.*

When a promissory note makes no mention regarding the payment of interest oral evidence is inadmissible, to prove a contemporaneous oral agreement to pay interest. All that can be awarded to a plaintiff suing on such a promissory note is interest at 6 per cent per annum under S. 80 of the Negotiable Instrument Act. 17 M.L.J. 286; 18 C.W.N. 1260; 1 P.L.J. 71, Foll. (*Findlay, A.J.C.*) YADO *v.* BEHARILAL.
33 I C. 242.

———**S. 92, proviso (2)**—*Interest—Mortgage—Subsequent agreement.*

Proof of a separate arrangement regarding payment of interest contradicting the terms of a mortgage-deed which provided for no interest expressly, is forbidden. 11 C.L.J. 39, 10 I C. 196; 12 I.C. 396; 6 O.C. 18; 11 O.C. 39 Dist. (*Stuart, J.C.*) MIR MAHOMED HUSSAIN *v.* MAHOMAD ASGAR. **3 O L J 462=37 I C. 28=19 O C. 328.**

EVIDENCE ACT (I of 1872), S. 92—Interest.

——S. 92, proviso (2)—*Interest—Hundi silent about rate of interest—Whether oral evidence is admissible regarding interest.*

No evidence is admissible under S. 92 to prove an oral contemporaneous contract as to the rate of interest where the Hundi is silent about it. (*Mullick*, J.) BANWARI LAL *v.* JAGAR NATH PRASAD. **35 I.C. 431= 1 Pat. L.J. 71.**

Interpretation of documents.

——Ss. 92, proviso (6) and 96—*Interpretation of documents—Description by boundary and name—Preference.*

If a document directly describes two sets of circumstances but cannot apply to both, evidence may be given to show to which set it is intended to apply. A description in a conveyance, lease or other document by boundaries overrides its description by name or outturn. (*Saunders*, J.C.) NGE CHO *v.* MI SE MI. **10 Bur. L.T 245=36 I.C. 7= (1916) 2 U.B.R. 110.**

Kabuliyat.

——S. 92, proviso (1)—*Kabuliyat—Proof of—Non-acceptance—Oral evidence.*

Where a kabuliyat executed and registered by a tenant is proved by the tenant in a suit there is nothing in the Evidence Act or the Registration Act to prohibit the landlord from showing that he never assented to or accepted the kabuliyat. (*Fletcher and Huda*, JJ.) HEMANTA KUMAR KAR *v.* BIRENDRANATH ROY CHOWDHURY. **47 I.C. 1003.**

——S. 92, proviso (4)—*Kabuliyat—Stipulation not to be enforced.*

A kabuliyat with a stipulation which the landlord has said is not to be enforced represents no real agreement between the parties and the tenant, cannot be deemed to have given assent to it. (*Mookerjee and Richardson*, JJ.) NADIR CHAND SAHA *v.* BIRENDRA NATH DUTT CHAUDHURI. **37 I.C 126=20 C.W.N. 1067.**

Landlord and Tenant.

——S. 92 (4)—*Landord and tenant—Creation of tenancy by registered deed—Termination of tenancy—Proof of.*

Even though a tenancy has been created by a registered instrument the termination of the tenancy can be proved otherwise than by a registered instrument. There is no question of varying of modifying the terms of the lease in such a case. (*Teunon and Newbould*, JJ.) AKHOY KUMAR GOUS *v.* ERADATULLA KAZI. **64 I C. 883.**

Lease.

——S. 92, proviso (4)—*Lease—Registered lease—Oral surrender—B. T. Act, S. 86.*

Even when the original lease is a registered one, a raiyat can orally surrender his holding under S. 86 of the B.T. Act if it was not for a fixed period and its possession is given up. 28 Cal. 256; 28 C.L.J. 220, Ref.; 13 C.L.J. 284, Dist. (*Chatterjee and Duval*, JJ.) PORANMATIA *v.* INDRA SENI. **54 I.C. 752= 47 Cal. 129.**

EVIDENCE ACT (I of 1872), S. 92—Lease.

——Ss. 92, provisos 4 and 115—*Lease in writing—Oral agreement dispensing with certain conditions.*

An oral agreement dispensing with certain conditions (as to the necessity for a notice of renewal) in a written lease is inadmissible. Such a statement on being assented to by the lessee, amounted to either to modification or recission of the contract of lease within S. 92, proviso 4. The statement did not amount to an estoppel on the part of the lessor, so as to preclude him from denying that the notice provided for by the lease had in fact been given. (*Sanderson*, C.J. *and Woodroffe*, J.) MARZ D'CRUZ *v.* JITENDRA NATH CHATTERJEE. **46 Cal. 1079=53 I.C. 684=29 C.L.J. 94.**

——S. 92, proviso (3)—*Lease—Condition precedent—Possession.*

It is open to a Court to admit evidence that an *ijara patta* granted by a landlord to a tenant was intended to be operative only in the event of the lessee being able to obtain possession of the leasehold property, and possession was a condition precedent to the attaching of any obligation upon the tenant to pay rent. (*Richardson and Huda*, JJ.) KAFILUDDIN BISWAS *v.* SABDAR ALI. **51 I.C. 918= 29 C.L.J. 478.**

——S. 92—*Lease—Commencement of tenancy—Oral agreement to lease—Proof.*

S. 92, Evidence Act is no bar to evidence to show the time of commencement of the tenancy under an oral agreement to grant a lease. (*Mookerjee and Roe*, JJ.) KAILASCHANDRA BHAUMICK *v* REJOY KANTA LAHIRI. **50 I C 177=22 C.W.N. 190.**

——S. 92, proviso (4)—*Lease—Registered lease—Suit for rent—Subsequent correspondence varying rate of rent—Ratification—Defence.*

In a suit for rent on foot of a registered lease a plaintiff cannot recover more than what was agreed to be paid under the lease as the terms of that document could not be contradicted or varied by subsequent correspondence which was not registered even though by that correspondence a binding agreement may have been made between the parties for altering the rent payable under the registered sub-lease. (*Fletcher and Newbould*, JJ.) SHIBA PRASAD ROY CHOWDHURY *v.* SAMARENDRA NATH BOSE. **41 I.C. 431.**

——S. 92—*Lease.*

Failure to register a lease compulsorily registerable acts as a bar to the admissibility of evidence. In such cases, oral evidence is totally excluded. (*Broadway and Abdul Qadir*, JJ.) LALA MOTI SAGAR *v.* DHARMA MAL. **1922 Lah. 329.**

EVIDENCE ACT (I of 1872), S. 92—Mistake.

Mistake.

———S. 92—*Mistakes—Description of property—Reference to earlier deed.*

Where on a renewal of a mortgage an item of property was misdescribed and there was no property satisfying that description belonging to the mortgagor, reference to the earlier deed of mortgage is permissible to establish the identity of the disputed item. (*Lindsay and Gokul Prasad*, JJ.) ABDUL HAKIM KHAN *v.* RAM GOPAL. **44 A. 246=20 A L J 53=L R. 3 A. 81=1922 All, 42.**

———S. 92, proviso (1)—*Mistake—Mutual—Registered deed—Admissibility.*

Proviso (1) to S. 92, Evidence Act, admits parol evidence of mutual mistake in a registered mortgage-deed. (*Sadasiva Aiyar and Napier*, JJ.) KOTA CHINA MELLAYYA *v.* KANNE KANTI VEERIAH. **31 I.C. 671=3 L.W. 661.**

———Ss. 92, proviso (1) and 94—*Mistake in description—Evidence to prove what was actually sold—Rectification under S. 31, Specific Relief Act.*

Under S. 92, proviso (1) any fact may be proved either by the plantiff or by the defendant which would entitle him to a decree on the ground of mistake of fact or law. Where there is a misdescription of the property sold the vendee can claim a rectification of the sale-deed under S. 31, Specific Relief Act. The combined effect of S. 92 proviso (1) of the Evidence Act and S. 31, Specific Relief Act, is that the defendant can resist a suit for possession on the ground that what was sold to him was different from what the sale-deed contained. The fact that he is a defendant does not disable him from setting up a plea which could have availed him as plaintiff. (*Seshagiri Aiyar and Napier*, JJ.) RANGASWAMI AIYANGAR *v.* SOWRI AIYANGAR. **39 Mad. 792=29 M.L J. 229=(1915, M.W.N. 448=29 I.C. 888=18 M L.T 75.**

———S. 92, proviso (1)—*Mistake—Vested interest—Oral evidence—Admissibility.*

To apply S. 92, proviso (1) it must be proved either that the legal requisite of a valid agreement did not exist or that there was no free consent or that the document does not express what was intended to be embodied in it. The proviso does not apply where the document represents what the parties intended to put into writing though it might not be in accordance with what they intended to do. A party cannot be permitted to show that an estate given under a document immediately to the grantee should vest in him only at a future time. A vendor cannot be allowed to show that the sale-deed created rights different from what it purports to create. A donor cannot be allowed to prove that the gift was intended to operate as a will. (*Benson and Sundara Aiyar*, JJ.) MOTAYTAPPAN *v.* PALANI GOUNDAN. **38 Mad. 226=(1913) M.W.N. 65)=20 I C. 924=25 M.L J. 290.**

EVIDENCE ACT I of 1872), S. 92—Mortgage.

———S 92, proviso (1)—*Mistake as to date—If assignee of mortgage-bond can show that the date is a misdescription.*

The assignee of a mortgage-deed can show that the date mentioned in the assignment bond is a misdescription if there is a mistake as to the date. 9 I.C. 729 Foll. (*Benson and Sundara Aiyar*, JJ.) NATESA PILLAI *v.* MUNUSAWAMI NAICKEN. **13 I.C. 313.**

Mortgage.

———S. 92, proviso (4)—*Mortgage—Registered usufructuary mortgage-desd—Subsequent unregistered written agreement varying the mode in which rents and profits are to be applied by mortgagee.*

Where there is an express and unambiguous stipulation in a registered mortgage-deed that the profits of the mortgaged property should belong to the mortgagee in lieu of interest, it cannot be varied or contradicted by reference to preliminary negotiations or previous conversations or by evidence of a sub-equent unregistered document. Effect must be given to the document as it stands and it is not open to the Court to treat it as merely usufructuary in form but creating a charge in fact. (*Lord Macnaghten.*) ABDULLAHKHAN *v.* BASHARAT HUSAIN. **38 All 48=40 I.A. 31=17 C.W N 233=13 M L T. 182=(1913) M.W.N. 131=17 C.L J. 312=15 Bom. L.R. 432=17 I.C. 737=(P C.)=25 M.L.J. 91.**

———S. 92, proviso (4)—*Mortgage—Oral evidence showing payment of a lesser sum in full satisfaction.*

Oral evidence is inadmissible under S. 92, proviso 4 of the Evidence Act to prove the defendant's case that the plaintiff agreed to receive a lesser sum in full satisfaction of the much greater amount which was due on the mortgages. (*Macleod*, C J. *and Heaton*, J.) JAGANNATH *v.* SHANKAR. **44 Bom. 55=51 I.C. 689=22 Bom L R. 39 Also 48 I.C. 188 (F.B.)=42 Mad. 41.**

———S. 92—*Mortgage—Property mortgaged—Oral evidence as to—Admissibility of.*

Oral evidence is admissible as to negotiations antecedent to execution of the mortgage instrument, showing what was intended to be offered and accepted as security was a certain ancestral share of the mortgagor in the original estate which at the time of the mortgage was part of the separate account. 22 All. 149; 5 Bom. L R. 853, Ref. (*Mookerjee and Buckland*, JJ.) BEPIN KRISHNA RAY *v.* JOGESHWAR. **26 C W N. 36=66 I.C. 345=34 C L J. 256.**

———S. 92, proviso (2)—*Mortgage—Default in payment—Agreement to take possession.*

S. 92 is no bar to the proof of an agreement between the mortgagor and mortgagee that on the default of the mortgagor to pay the mortgage money on the due date the mortgagee was

EVIDENCE ACT (I of 1872), S. 92—Mortgage.

to take possession of the mortgaged property. (*Mookerjee and Cuming*, JJ.) AFSAR SHAIK *v.* SAURAVA SUNDARI DASI. 40 I C. 371 = 25 C.L.J. 560.

———S. 92, proviso (4)—*Mortgage—Subsequent oral agreement—Release of—Mortgagor from liability.*

A subsequent verbal agreement entered into by the mortgagee and mortgagors, the mortgagee agreeing to hold each of the mortgagors liable only for his proportionate share of the mortgage-debt contrary to the joint and several liability contracted under the registered mortgage bond is inadmissible in evidence. The agreement would be admissible only if it is evidenced by another registered instrument. (*Sanderson*, C. J. *and Mookerjee*, J.) KRISHNA CHARAN BARMAN *v.* SANAT KUMARDAS. 44 Cal 163 = 25 C.L.J. 24 = 34 I.C. 609 = 21 C.W.N. 740.

———Ss 92, proviso (4) and 58—*Mortgage—Oral agreement to take less than what is due—Proof of admission in pleadings.*

A subsequent agreement by the mortgagee to take less than is due under a registered mortgage is an agreement modifying the terms of written contract and if it has to be proved, oral evidence is inadmissible under proviso (4) to S. 92 of the Evidence Act. Where however such an oral agreement is admitted in the pleadings of the other party, proof of the agreement is dispensed with by S. 58 of the Evidence Act. (*Wallis* C.J *Oldfield and Seshagiri Aiyar*, JJ.) MALLAPPA *v.* NAGA CHETTY. 42 Mad. 41 = 35 M L J 555 = 8 L.W. 522 = 21 M.L.T. 400 = 48 I C 1 8 = (1918 M W.N. 719.

———S 92, proviso (4) —*Mortgage—Agreement to take lesser sum—Inadmissible.*

S. 92 (4) precludes evidence of an oral agreement to rescind a registered contract. 32 M. 281 ; 9 I.C. 340 Ref. ; 23 M. 92 ; 23 B. 348 ; 30 M. 231, Dist. An agreement whereby a lesser amount was agreed to be taken or a different period was fixed in respect of a registered mortgage would be a variation of the terms and would fall within S. 92. A mortgage registered, cannot be cancelled or rescinded either orally or by an unregistered endorsement on the mortgage-deed reciting that the bond was cancelled and returned as the amount due was paid. 37 C. 589 ; 19 M. 288, Ref. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NAMAGIRI LAKSHMI AMMAL *v.* SRINIVASA AIYANGAR. 27 I.C. 269.

———S. 92, provisos (2) and (4)—*Mortgage by conditional sale—Conversion into usufructuary mortgage—Admissibility of oral evidence.*

Where evidence was adduced to prove that a mortgage by conditional sale was by agreement turned into an usufructuary mortgage, *held*, that the alleged agreement was not in

EVIDENCE ACT (I of 1872), S. 92—Negotiations.

the nature of one contemplated by proviso 2 to S. 92 and hence evidence of such an agreement was inadmissible and also that as the mortgage was registered, no such agreement could be proved except by means of a registered instrument under proviso 4. (*Piggott*, J.C. *and Lindsay*, A J.C.) AJODHYA PRASAD *v.* JAGADISH SINGH. 13 I.C. 813 = 14 O.C. 321.

———S 92, proviso (4)—*Mortgage—Unregistered agreement*

A. B, mortgaged certain property to the plaintiffs C the third co-sharer died and his widow mortgaged her one-third share except a certain village to the plaintiffs. It was alleged by C's heirs that there was an arrangement agreed upon afterwards by which the mortgagee was to take the profits of the village B and utilize them to repayments. *Held*, that the agreement was admissible in evidence and that the S. 92 (4) of the Evidence Act did not apply. (*Sundar Lal*, J.C.) KEDAR SINGH *v* SAMAR SINGH. 10 I.C. 196.

———S. 92 (4)—*Mortgage—Oral agreement as to terms of redemption—Admissibility.*

Where the parties enter into a contract, they can substitute anotber in its place and the substituted contract is the one to be looked to, not the one which was first entered into. If the law requires that the substituted contract shall be made only in a certain way and in compliance with certain formalities such as writing and registration then unless it is so made, it cannot take effect and the old contract subsists. (*Maung Kin*, J.) U. KYO *v.* MG. PAN YO. 1923 Rang. 102 (1).

———S. 92, proviso (4)—*Mortgage — Oral agreement to forego interest—No discharge—Contract Act, S. 63.*

An oral agreement between a mortgagor and a mortgagee whereby the latter agreed to forego interest for three years in consideration of the payment of principal sum in a lump within a certain date is inadmissible in evidence. There being no payment of the principal money, S. 63 of the Contract Act did not apply. (*Twomey*, C J. *and Parlett*, J.) MAUNG SHWE MIN *v.* THE CHETTY FIRM OF A M. 43 I.C. 913.

Negotiations.

———S. 92—*Negotiations — Oral evidence regarding what took place at the time of deed.*

Where the plaintiff contended that the two documents which formed the foundation of the suit, formed a completed contract ; whilst the defendant vendor urged that it was only a provisional arrangement conditional to the preparation by a vakil of a formal document evidencing the contract, *held*, oral evidence to show what actually took place on the occasion when the parties entered into the agreement relied upon by the plaintiff is

EVIDENCE ACT (I of 1872), S. 92—Negotiations.

irrelevant and inadmissible, (*Mr. Ameer, Ali*) HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE **44 M L J 608 = 47 Bom. 335 = 28 C W.N 73 = 50 I.A 25 = 17 L.W. 572 = 32 M.L T (P C) 173 = L.R. 4 P.C 84 = 37 C L.J. 440 = 25 Bom L.R. 531 = 1923 P.C, 47 (P.C.)**

——S. 92—*Negotiations—Express agreement—Terms not to be varied by evidence of preliminary negotiations.*

Where there is an express and unambiguous stipulation in a mortgage deed that the profits of the mortgaged property should belong to the mortgagee in lieu of interest, it cannot be varied or contradicted by reference to preliminary negotiations or previous conversations. Effect must be given to the document as it stands and it is not open to the Court to treat it as merely usufructuary in form but creating a charge in fact. (*Lord Macnaghten*) ABDULLAHKHAN *v.* BASHARAT HUSSAIN. **35 All. 48 = 40 I.A. 31 = 17 C W.N. 233 = 13 M L T 182 = (1913) M.W N. 131 = 17 C.L.J. 312 = 15 Bom. L.R. 432 = 17 I.C. 757 = 28 M L J. 91 (P.C.).**

——S. 92—*Negotiations—Extrinsic evidence—Tenancy—Lease—Existence of—Identification of property.*

Where there is dispute as regards the identity and extent of the land leased, the Court can look at the correspondence that preceded the lease. (*Ratique and Stuart, JJ.*) SITAL PRASAD *v.* BADRI PRASAD. **20 A.L.J. 907 = 1923 All. 53.**

——S. 92—*Negotiations—Oral evidence as to negotiations antecedent to mortgage—If admissible.*

Oral evidence is admissible as to negotiations antecedent to the execution of the mortgage-deed, to show that what was intended to be offered and accepted as security was a certain ancestral share of a property and not one which has been mentioned in the instrument. (*Mookerjee and Buckland, JJ.*) BEPINKRISHNA *v.* JOGESWAR. **34 C L J 256 = 25 C W N. 36.**

——S. 92—*Negotiations—Draft deed prepared before execution of document—Admissibility of.*

Drafts prepared long before executing documents are inadmissible to construe documents which are not ambiguous. (*Benson and Sundara Aiyar, JJ.*) NARASIMHA HEGADTHI *v.* BILLA KESU PUJARI. **31 I.C. 543 = 25 M.L J. 631.**

Oral Agreement.

——S. 92 proviso (3)—*Oral agreement—Condition precedent.*

A person is not permitted to vary the terms of a written contract by proof of a contemporaneous oral agreement. Under S. 92, proviso 3 a contemporaneous oral agreement to the effect that a written contract was to be of no force at

EVIDENCE ACT (I of 1872), S. 92—Oral Agreement.

ali and that it was to impose no obligation at all, until the happening of a certain event may be proved. It may be shown that the instrument was not meant to operate until the happening of a given condition; but it cannot be shown by parol evidence that the agreement is to be defeated on the happening of a given event. 25 C 401; 42 I C. 372, Ref. (*Ryves and Gokul Prasad, JJ.*) ALI JAWAD *v.* KULANJAN SINGH. **44 A. 421 = 20 A.L J 247 = L.R. 3 A 205 = 4 U.P.L.R (A) 182 = 1922 All 262.**

——S. 92 (3)—*Oral agreement to make payment as condition precedent to enforcement of deed.*

An oral agreement to make a payment as a condition precedent to the enforcement of a registered deed of relinquishment can be proved under S. 92 (3) of the Act. (*Kanhaiya Lal, J.*) BADAL RAM *v.* JHULAI. **63 I C. 861 = 19 A L J. 816.**

——S. 92—*Oral agreement—Admissibility.*

If a document is formally drawn up, it would not be open to the parties to adduce in proof of a contemporaneous oral agreement. 18 C.W.N. 1261 and 9 C.L.R. 501, Ref. (*Cuming, J.*) MOTI BISWAS *v* HARIPADA. **1923 Cal. 402.**

——S. 92, provisos (3) and (4)—*Oral agreement—Condition precedent to liability.*

Under provisos 3 and 4 respectively of S. 92 of the Act an oral agreement constituting a condition precedent to the attaching of any obligation under the contract, and a distinct subsequent oral agreement, modifying the written contract, where the latter is not required to be in writing and registered, can be let in and proved. (*Mookerjee and Fletcher, JJ.*) DINA NATH *v.* METHARAM **61 I C. 785 = 33 C L J. 577.**

——S. 92 (2) and (4)—*Oral agreement—Share list—Registration.*

An oral agreement is admissible to prove that a deed called "Share-list" was not to be treated as a partition-deed but merely as minutes of agreement and that a fresh formal deed was intended to be executed, But if the deed itself was intended by the parties to be the final partition deed, it is inadmissible in evidence unless it is registered. (*Krishnan and Venkatasubbarao, JJ.*) GUNDAPANENI *v.* KRISTNAYYA. **16 L.W. 784 = (1922) M.W N 833 = 1923 Mad 160 (1).**

——S. 92, proviso (3)—*Oral agreement—Condition precedent to the taking effect of a contract in writing—If admissible.*

Oral evidence is admissible to prove an oral arrangement that a document should take effect only on certain conditions happening. (*Abdur Rahim and Munro, JJ.*) MAHALINGA AIYAR *v.* HYDER SAHEB. **11 I C 384 = 9 M.L T. 450.**

EVIDENCE ACT (I of 1872), S. 92—Oral Agreement.

———S. 92, proviso (3)—*Oral agreement—Condition precedent to the attaching of any obligation.*

An attempt to show that the agreement reduced to writing is not what it purported to be but something different, is opposed to S. 92 (3) of the Evidence Act but oral evidence of an agreement constituting a condition precedent to the attaching of an obligation under the instrument could be proved. (*Batten*, J.C.) TATIA *v.* SAWANIA. **6 N L J 21= 1923 Nag. 185.**

———S. 92—*Oral agreement.*

The interlineated words and figures in an ekrarnama were written after it had been signed by the defendant. The plaintiff's allegation was that there was an agreement made before the execution of the ekrarnama, which justified the additions to the document which do not alter it in the least but merely explain it. *Held*, the effect on the document would be as if no alteration had been made, and the plaintiff would be entitled to produce oral evidence of the oral agreement 12 C.P.L.R. 33 and 6 N.L.R. 1, Foll; 44 Cal. 154, Foll. (*Hallifax*, A.J.C.) GANGA PRASAD *v.* MOTIRAM. **1922 Nag. 191.**

———S. 92, proviso (3)—*Oral agreement—Condition precedent—Proof of—Rate of interest—Evidence as to.*

Proviso 3 to S. 92 of the Evidence Act is intended to embody the rule that when at the time of a written contract being entered into, it is orally agreed between the parties that the written agreement shall not be of any force or validity until some condition precedent has been performed, parol evidence of such oral agreement is admissible to show that the condition has not been formed and consequently that the written contract has not become binding. Until that condition is performed there is in fact no written agreement at all. The proviso cannot help a plff. who wishes to prove a separate oral agreement, as to the rate of interest between him and the plff. when the document provides for interest at a specific rate. 20 A.L.J. 247, Rel. (*Lyle*, A.J.C.) HABIB ALI KHAN *v.* LALA RAM NARAYAN. **9 O L J. 273=4 U.P L R. (O C) 69= 1922 Oudh 270.**

———S. 92 (4)—*Oral agreement—Satisfaction of mortgage.*

Oral evidence of an agreement that a simple mortgagee under a registered mortgage-deed was to take possession and to collect rents and pay the profits towards reduction of the principal is admissible. (*Sundar Lal*, J.C.) KEDAR SINGH *v.* SUMMER SINGH. **10 I.C. 196.**

———S. 92 (4)—*Oral agreement.*

In the mortgage there was a forfeiture clause to the effect that the mortgagor was to be debarred from redeeming the property after the expiration of two years from the date of the mortgage. A year afterwards the mortgagor said, he by a pyatpaing made over the land to the defendants who promised to allow redemption at any time. *Held*, the oral agreement could not be proved. (*Maung Kin*, J.) U. KYO *v.* MG. PAN YO. **1 Bur. L J 193= 1923 Rang. 102 (1).**

EVIDENCE ACT (I of 1872), S. 92—Promissory Note.

———S. 92—*Oral agreement—Proof of.*

Dekhan Agriculturists Relief Act, S. 10-A allows oral agreement to be proved. (*Kennedy and Raymond*, JJ.) HAMBIR KHAN *v.* MURIJMAL. **15 S.L.R 160=1922 Sind 39.**

———S. 92—*Oral agreement—Agreement to sell—Oral agreement to vary terms—Admissibility.*

Where the terms of an agreement to sell land are clear and formal and a certain sum of money was to be paid in four months, evidence of an oral agreement cannot be let in to prove that a big portion of the money was to be paid on the day subsequent to the agreement to sell. (*Madgaonkar*, A.J.C.) KHEMCHAND RATANCHAND *v.* DHALOMAL. **67 I.C. 19= 15 S.L.R. 180.**

Parol Agreement.

———S. 92, proviso (4)—*Parol agreement—Assignment of mortgage.*

An oral agreement between a mortgagee and the assignee of his interest whereby the latter was to pay the consideration for the sale to a third person to the credit of the mortgagee is an attempted rescission of a contract required by law to be in writing by a subsequent oral agreement which is forbidden by S. 92, proviso (4) and is inadmissible in evidence; nor can a suit be based on it. 30 M 231; 32 M. 281, Foll. (*Abdur Rahim and Ayling*, JJ.) IYETALY SURAYYA *v.* NALAMILLI VENKANNA. **9 I.C. 340=9 M.L.T. 326**

Plain Document.

———S. 92, proviso (6)—*Plain document—Extrinsic evidence.*

A party cannot alter the nature of a document clearly a sale-deed, after putting the signature, by adding something when it is registered, to make it mean something other than it really appears to be. When a document is clear, perfectly plain and straight-forward, other extrinsic evidence of the relation of the language to the existing facts is unnecessary. S. 92, proviso 6 allows evidence to be put in only to explain the terms of a document then required. (*Macleod*, C.J. *and Crump*, J.) GANPAT RAO APAJI JAGTAP *v.* BAPU TUKARAM. **44 Bom. 710= 58 I.C. 574=22 Bom. L.R. 831.**

Promissory Note.

———S. 92, proviso (2)—*Promissory note—Contemporaneous oral agreement—Admissibility of—Onus.*

Oral evidence to prove that the defendant's liability on a promissory note executed by him

EVIDENCE ACT (I of 1872), S. 92—Promissory Note.

and payable on demand, should cease by a specified date, is inadmissible under S. 92. But as the defendant's case in evidence was that the promissory note was executed jointly by him and H as recited therein, but that it was orally agreed that the advance to the defendant on the note, was on the arrival of a specified date to be held, as an advance by plaintiff (the payee) to H of a sum of money which plaintiff had separately contracted to advance to H on that date, and that the joint promissory note should be satisfied by a fresh note given by H, evidence of the agreement was admissible under S. 92 (2) of the Evidence Act. (*Lord Dunedin.*) MOTABHOY MULLA *v* MULJI HARIDAS.
39 Bom. 399=17 M L.T 402=28 M L J. 589=13 A.L.J. 529=19 C W.N 713=21 C L J. 907=17 Bom. L R. 460=2 L.W 524=(1915) M.W.N. 522=29 I C. 223=42 I.A. 103 (P.C.).

——S. 92—*Promissory note— Agreement that money was not to be demanded until settlement of accounts—Admissibility of.*

Where a pro-note is sought to be enforced according to its tenor, it is not open to the defts. to let in evidence an alleged agreement that the pro-note was executed only as security against an apprehended loss and that the accounts had to be looked into at a later date so as to ascertain the rights of the parties before the pro-note could be enforced. (*Lindsay and Stuart, JJ.*) SRI RAM *v* FIRM OF SOBHA RAM GOPAL RAI.
44 A. 321=20 A L.J. 316=L.R 3 A. 453=4 U P L.R. (A) 153=1922 All 213.

——S. 92—*Proviso (3) Promissory note passed to safeguard the plaintiff against a probable claim—Evidence is admissible to prove condition precedent.*

In a suit on a pro-note the defence was that the promissory note in suit was passed to secure plff. against any claim that might be made by the prior mortgagees, who had been paid off and from whom the defendant had failed to obtain a re-conveyance and that the note was to be returned when the re-conveyance was executed. *Held*, that the plea was as to the existence of a condition precedent and the same should be allowed to be proved according to S. 92, proviso (3). 45 Bom. 1155, Dist. (*Shah Ag. C.J. and Kemp, J.*) AHMED SAHIB BAPU *v.* UBHAIYA HARSI.
25 Bom. L.R 857=1924 Bom. 44.

——S. 92—*Promissory note—Oral evidence of purpose of loan.*

If an advance under the oral contract for sale is secured by a pro-note, the making of the note does not shut out the proof of the terms of the contract. (*Rigg, J.*) BA SHEIN *v.* EMPEROR.
10 L B.R. 366=13 Bur. L.T. 239=22 Cr. L.J 721=1922 L B. 10.

Recitals.

——S. 92—*Recitals—Sale-deed—Variation of.*

EVIDENCE ACT (I of 1872), S. 92—Sale.

A vendor is not estopped from showing that the consideration stated to have been received in the deed was not actually received. 22 A. 317 (P.C.); 2 Bom. L R. 553, Ref. to. (*Richards, C.J. and Tudball, J.*) PUTHI *v.* NAND KISHORE.
25 I.C. 27.

——S. 92—*Recitals—Necessity for mortgage.*

In a suit for sale on the basis of a mortgage-deed which was executed in lieu of a prior mortgage-deed, not produced in the suit, oral evidence was admissible to prove the circumstances when the mortgage-deed was executed to show that the mortgage was executed for a family necessity. (*Chamier, J.*) RAM JAR SINGH *v.* BHAGALU SINGH.
17 I.C. 669=10 A L J. 401.

—— S 92—*Recitals—Variance of.*

It is competent to the real purchaser under a sale-deed to prove the payment of the purchase-money by parol, even though it was expressed otherwise in the kobala. (*Chaudhury and Cuming, JJ.*) KSHETRA NATH ADHIKARI *v.* DURGAPADA MANDAL.
52 I.C. 902.

—— S 92—*Recitals—Partition—Variation of.*

In spite of the apparent tenor of a deed of partition parties may prove either that the partition, was incomplete or that certain properties were reserved for future division. (*Seshagiri Aiyar and Bakewell, JJ.*) DURAISWAMI REDDIAR *v.* RAJA GOPAL REDDIAR.
34 I.C 712=4 L.W. 329.

——S. 92—*Recitals—Oral evidence to vary or contradict.*

S. 92 of the Evidence Act does not exclude evidence of an oral agreement which contradicts, varies, adds to, or subtracts from not the terms of the contract, but some recitals in the contract itself. (*Das, J.*) MUKHI SINGH *v.* KISHUN SINGH.
51 I.C. 320.

Relinquishment.

——S. 92—*Relinquishment—Lease— Oral surrender, evidence of, is admissible.*

Where the lease is by registered instrument, oral evidence as to the surrender is admissible. (*Chatterjee and Newbould, JJ.*) GOPAL CHANDRA *v.* HARENDRA NATH.
63 I.C. 483.

——S. 92, proviso (4)—*Relinquishment—Under-raiyati interest.*

Where an instrument regarding the creation of an under-raiyati interest worth less than Rs. 100 is registered, evidence may be given of an unregistered document to show that the interest was relinquished. (*Teunon and Newbould, JJ.*) SORMAN FAKIR *v.* MOLLA ABDUL AZIZ.
57 I.C. 949.

Sale.

——S. 92, proviso (6)—*Sale deed—Evidence show that gift was intended.*

Extrinsic evidence is admissible to show that a deed which is in form a deed of sale

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with a receipt for the consideration was in reality intended to operate as a deed of gift. (*Lord Macnaghten*). HANIFUNNISSA *v.* FAIZUNNISSA. **33 All. 340=15 C.W.N. 521=8 A.L.J. 373=13 C L J 510=13 Bom L.R. 391=10 M.L T. 23=(1911) 2 M.W.N. 370=11 I.C. 398=21 M L.J. 1126 (P.C.).**

[On appeal from 27 All. 612.]

——S. 92—*Sale—Oral evidence to vary terms of—Sale or mortgage.*

It is not permissible to a person, who wishes to impeach a written document of sale, to assume there must have been an oral agreement to reconvey and to ask the Court to believe that there must have been a representation made by the obligee to the obligor that the document would never be enforced as a sale-deed but treated as a mortgage. (*Macleod*, C.J. *and Shah*, J.) BAI ADHAR *v.* LALBHAI HIRACHAND. **24 Bom. L R. 239=1922 Bom. 41.**

——S. 92, proviso (4)—*Sale absolute—Conditional sale—Contemporaneous agreement.*

Where the document clearly indicates an absolute sale, no evidence can be admitted of any other contemporaneous unregistered agreement by the vendee in order to state that the sale-deed was in reality a mortgage and was not unconditional or absolute sale. 33 All. 340, Expl. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) PUTTI SESHA AIYAR *v.* KUP PACHAR. **26 M L.T 291=10 L W. 1=49 I.C. 699=(1919) M W.N 87.**

——S. 92, proviso (4)—*Sale—Mortgage—Unregistered agreement to reconvey—Whether admissible.*

A written agreement to reconvey immoveable property not being registered though compulsorily registrable can only operate as a contract, and in the absence of fraud, cannot be admitted in evidence to prove that a sale-deed was a mortgage-deed. (*Pratt* J.C *and Crouch*, A.J.C.) BILAWAL *v* CHOTHRAM. **19 I.C 729=6 S L.R. 245.**

Scope.

——S. 92—*Scope of—Deed unregietered and unstamped—Oral evidence—Admissibility.*

Where a partition deed entered into between the parties was neither stamped nor registered and the Court refused to admit it in evidence but took oral evidence of the terms of the partition. *Held*, that the parties having reduced their agreement into writing could not be allowed to give oral evidence of the contents of that written document or of the verbal terms agreed upon before the document was executed. 19 Bom. L. R. 466. applied. (*Mears*, C.J. *and Piggott*, J.) JAI RAM DAS *v.* RAJ NARAIN. **20 A L J 777=L. R. 3 A. 533=45 A. 29=1922 All. 493.**

EVIDENCE ACT (I of 1872), S. 92—Terms of the Contracts.

——S. 92—*Scope—Unregistered* amalnamah—*Oral evidence of settlement—Admissibility.*

Where an *amalnamah* is inadmissible in evidence for want of registration, no evidence is admissible on the question as to the persons for whom the settlement was made or as to the extent of their shares settled. (*Chatterjee and Newbould*, JJ.) HEM CHANDRA *v.* SASHI BHUSAN. **63 I.C. 863.**

——S. 92—*Scope—Acknowledgment in writing but unstamped—Parol evidence.*

Parol evidence is admissible to prove a debt, acknowledged in writing by the debtors, when such acknowledgment being unstamped is inadmissible in evidence. (*Le-Rossignol*, J.) TIKHAN RAM *v.* LAL. **1922 Lah. 301 (1).**

——S. 92—*Scope—Partition.*

Where an unregistered deed evidencing a partition cannot be proved, oral evidence of factum of partition and nature of parties' possession is admissible. (*Dhobley*, A.J.C.) LAXMAN BHAT *v* BANABAI. **64 I.C. 906.**

——S. 92, proviso (3)—*Scope.*

The oral agreement contemplated in S. 92, proviso (3) only suspends the operation of the obligation and an oral agreement which is a defeasance would contradict the written agreement and would therefore be inadmissible. 6 Cal. 433, Rel. (*Mittra*, A.J.C.) VITHU JAIRAM *v.* AKARAM. **42 I C. 372.**

——S. 92—*Scope—"Between the parties," meaning of.*

S. 92 applies to all parties to a document whether the dispute is between the parties on the one side and the other or between the parties on the same side. Parties on one side to a transaction cannot be allowed to show that the transaction though purporting to be a sale was mortgage. (*Pratt and Duckworth*, JJ.) MAUNG TUN GYAW *v.* MAUNG PO THWE. **1922 L.B. 37.**

Terms of the Contracts.

——S. 92—*Terms of the contract—Contractor shown to be agent.*

Where the question is whether a contracting party acts for himself or for his principal, it is not one relating to the terms of the contract and parol evidence is admissible under S. 92 proviso. *Prima facie*, a contract by a person in his own name without more is a contract by him as principal. 5 Cal. 71 Ref. to. (*Wallis*, C.J *and Seshagiri Aiyar*, J.) SOUTH INDIAN INDUSTRIALS *v.* MINDI RAMJOGI. **26 I C. 822=27 M.L J. 501.**

——S. 92—*Terms of the contract—Parties to document.*

Held, the landlord who gave or executed the receipt in question and the tenants in whose favour the receipts were executed or to whom they were granted and who accepted those

EVIDENCE ACT (I of 1872), S. 92—Third Parties.

receipts were parties therein. Further, the recitals in the receipts as to the period for which the payments were made and accepted do clearly evidence one of the terms of the contract. Contracts of leases are in their very nature founded upon executory consideration inasmuch as the payment of rent on the part of the lessee is to be made in future at the stipulated points of time to the lessor. Therefore the recital in the receipts that the payments were made in discharge of the liability under the executory contract is recital of an essential term of the contract. (*Wazir Hasan*, A.J.C.) KUNWAR BEHARI LAL *v.* KALKA.
1923 Oudh 45.

Third parties.

———S. 92 — *Third parties — Conveyance absolute—Oral evidence to prove a transfer of mortgage was intended—Fraud.*

As between the parties to an absolute conveyance, S. 92 of the Evidence Act precludes the giving of oral evidence to prove that the transaction was intended to be a mortgage only. The English equity doctrine permitting evidence of acts and conduct of the parties to be given in evidence for the purpose of ascertaining the true intention of the parties is not applicable to India in the face of S. 92. 27 I.A. 58 Foll.; 4 B. 594; 9 C. 528; 16 M. 80; 25 C. 603; 28 C. 256; 28 C. 289 Dissappr. 25 M. 7; 30 B. 119 Appr. S. 92, however, applied as between the parties only. Wherever accordingly evidence is tendered as to a transaction with a third party, it is governed not by the section but by the ordinary rules of equity and good conscience. Where therefore a person takes a sale-deed knowing that a third person is the owner of the property and the vendor is only a mortgagee and the intention of the parties is merely to transfer the mortgage, oral evidence is admissible to prove the real nature of the transaction. *Semble.* Even if S. 92 applied to the case, proviso (1), would admit the oral evidence, as it would be a fraud to insist upon a claim to property arising out of such a transaction, the claimant knowing that the true owner had never parted with it. (*Lord Shaw*). MAUNG KYIN *v.* MA SHWE LA. 46 Cal. 320=16 A L J. 825=
33 M L J 648=3 Pat. L W 185=
6 L.W. 777=22 C.W.N. 257=23 M L T 36=
27 C.L J. 176=20 Bom. L.R. 278=
(1918) M.W.N. 300=9 L B R. 114=
11 Bur. L.T 21=
42 I.C. 642=44 I.A. 236 (P C.)
[Reversing 26 I.C. 111=
8 Bur. L T. 104 (P.C.).]

———S. 92—*Third parties—Suit for pre-emption—Vendee if can prove document was not a sale.*

In a suit for pre-emption on the footing on which the defendant had taken a deed of sale from the owner the vendee can give oral evidence to show the document was not a sale. S. 92, Evidence Act, does not apply as the pre-

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emptor is not a party to the written instrument or the representative of either of the parties to it. (*Lindsay and Sulaiman*, JJ.) BHULLAN SINGH *v.* KHUSHI RAM.
21 A.L.J. 932=L.R. 5 A Civ. 41=
1924 All. 229 (2).

———S. 92—*Third party.*

Whenever evidence is tendered as to a transaction with a third party, it is not governed by S. 92 or by the rule of evidence which it contains, and in such a case accordingly the ordinary rules of evidence of equity and good conscience come into play unhampered by the statutory restrictions. (*Macleod*, C J. *and Crump*, J.) TALAK CHAND BHERAJI *v.* ATMARAM KESHAV VAIDYA.
26 Bom. L.R. 818=1924 Bom. 56.

———S. 92—*Third parties—Applicability—Sale or mortgage—Oral evidence.*

S. 92 only applies to parties to a document and their privies. In cases of transactions with third parties, the section has no application, and the ordinary rules of equity and good conscience come into play unhampered by any statutory restrictions. 45 C. 320 P.C. Ref. (*Shah and Morten*, JJ.) GANU RAMJI *v.* BHAU BAPUJIPATIL. 42 Bom. 512=
46 I.C. 662=20 Bom. L R. 684.

——— 92—*Third parties—Evidence admissible.*

The provisions of S. 92 excluding oral evidence do not apply to a case where one of the parties to the suit is not a party to the document about which oral evidence is proposed to be let in. (*Teunon and Newbould*, JJ.) SUKUMARI DEBI *v.* KALIPADA MUKERJEE.
43 I.C. 13.

———S. 92—*Third party—Oral evidence—Proof of oral transaction.*

Where the whole contract is not embodied in writing and when that part of the contract relates to a party not a party to the document, oral evidence to prove that part of the contract is admissible. (*Woodroffe and Carnduff*, JJ.) NATHU KHAN *v.* SEWAK KOERI.
9 I.C. 161=13 C.W.N. 408.

———S. 92—*Third parties—Not affected.*

The prohibition in S. 92 of the Act applies only to parties to a deed and not to outsiders. (*Johnstone and Rattigan*, JJ.) MEGHARAM *v.* MAKHAN LAL.
67 P R 1912=
126 P.L.R. 1912=13 I C. 667=
255 P.W.R. 1912.

———Ss. 92 and 99—*Third parties—Sale—Evidence to show that transaction was a mortgage—Admissibility.*

S. 99 of the Evidence Act is an enabling section; S. 92 is a disqualifying section. The word 'varying' in S. 99 of the Evidence Act covers the same ground as the words 'contradicting, varying, adding to or subtracting from' in S. 92 of the Act. S. 99 provides that persons who are not parties to a document, or

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their representative in interest can adduce oral evidence to show contemporaneous agreement. 45 C. 320 Expl. (*Sadasiva Aiyar and Napier*, JJ.) KRISHNASWAMI AIYAR *v.* MANGALATHAMMAL. **53 I.C. 248.**

———S. 92—*Third parties—Parties on the same side—Admissibility of oral evidence.*

S. 92 of the Evidence Act merely prevents evidence being given to vary the terms of a document in a proceeding between the parties to the document and their representatives. Two persons who are arrayed on the same side such as joint vendees can give evidence to vary the terms of the written instrument in a contest among themselves. (*Mittra*, A.J.C.) RAJIB HUSAIN *v.* ZINGARAJI. **54 I.C. 962.**

———S 92—*Third parties—Real nature of transaction—Evidence of—Admissibility.*

S. 92 of the Evidence Act is confined to proceedings between the parties to the deed or their representative in interest and has no application to claims by or against third persons. Parties to a transaction which is not really an out and out sale are not estopped in a suit for pre-emption brought by a third party from showing the real nature of transaction even when the document evidencing the transfer stands in the form of a sale-deed. (*Kanhaiya Lal and Daniels*, A.J.C.) BISHU NATH SINGH *v.* BALDEO SINGH. **47 I.C. 194=21 O.C. 165.**

———Ss. 92 and 99—*Third parties—Sale or mortgage—Extrinsic evidence as to show real nature of transaction.*

Extrinsic evidence is admissible to show the real nature of the transaction both as against and in favour of persons not parties to the deed. To get at the real nature of the document, the Court has to look to the surrounding circumstances and subsequent conduct of the parties in addition to the terms of the document. (*Piggott*, J.C., *and Kanhaiya Lal*, A.J.C.) BALDEO SINGH *v.* PUTTU LAL. **21 I.C. 69.**

———S. 92—*Third parties—Sale or gift—Extrinsic evidence to show real nature of transaction.*

As between persons not parties to a deed, extrinsic evidence is admissible to show that an ostensible sale is really a gift. 28 A. 473; 33 A. 340, Ref. (*Kanhaiya Lal*, A.J.C.) ALLA BAKSH *v.* HAJJIN IMDADI. **21 I.C. 60.**

———Ss. 92 and 99—*Third parties—Exclusion of oral evidence.*

S. 92 applies only to parties to the contract and not to a third party. A pre-emptor can produce oral evidence to prove that an alleged mortgage is in reality a sale. (*Lindsay*, J.C. *and Rafiqus*, A.J.C.) MAJIDAR BIBI *v.* FAZAL KARIM. **19 I.C. 679=16 O.C. 9.**

EVIDENCE ACT (I of 1872), S. 92—Usage.

———S. 92—*Third parties—Oral agreement not conformed to in written deed of compromise.*

Where an assignment is in writing, oral evidence to vary or alter its terms is admissible at the instance of third parties who impeach the transaction as fraudulent. (*Pratt*, J.C. *and Hayward*, A.J.C.) PERUMAL *v.* MUHAMMAD ALI. **17 I.C. 39=6 S.L.R. 107.**

Trade Usage.

———S. 92, proviso (8)—*Trade usage—Contract.*

Evidence of usage of trade applicable to a contract which the parties making it knew, or may be reasonably presumed to have known is admissible for importing terms into the contract respecting which the instrument itself is silent. (*Chaudhuri*, J.) JOY LALL & CO. *v.* MANMOTHANATH MULLICK. **35 I.C. 3=20 C.W.N. 365.**

———S. 92, proviso (5)—*Trade usage—Commercial contracts—Oral evidence.*

The law recognizes the fact that merchants do not write all the terms of their contract but rely upon the knowledge and good faith of one another as to matters so well known that special reference to them would be burdensome and unnecessary and that they accordingly agree on many of the terms of their contract by mere silence. What the terms are must be shown by parol evidence. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) LAKURKA COAL CO., LTD. *v.* JAMNADAS. **33 I.C. 838.**

Usage.

———S. 92—*Usage—Trade usage—Evidence of—When can be let in to vary terms of written contract—Must not render contract insensible, inconsistent or unreasonable.*

Evidence of trade usage can be let in to vary terms of contract when it does not render contract insensible, inconsistent or unreasonable. (*Mookerjee*, A.C.J. *and Fletcher*, J.) KASIRAM PANIA *v.* HURNUNDROY FULCHAND. **26 C.W.N. 354.**

———S. 92, para. 5—*Usage—Customary incidents of tenure, if provable to vary express provisions in a written contract.*

Where in *dowl kabuliyat* it was expressly provided that the tenancy is neither heritable nor transferable, no evidence of custom under those heads are admissible under S. 92 of the Act. (*Greaves and Newbould*, JJ.) MAHOMMED AYYUDDIN MIA *v.* PRODYOT KUMAR TAGORE. **48 Cal. 359=61 I.C. 503=23 C.W.N. 13.**

———S. 92, proviso (5)—*Usage—Written contract—Evidence.*

The mere fact that the usage varies the apparent contract is not of itself sufficient to exclude the evidence. The test is, whether the incident if expressed in the written contract would make it insensible or inconsistent or

EVIDENCE ACT (I of 1872), S. 92—Usage, unreasonable. (*Mookerjee*, C.J. *and Fletcher*, J.) KASIRAM PANIA *v.* HURNUNDROY FULCHAND. 58 I.C. 396 = 32 C.L.J. 140.

———S. 92, proviso (5)—*Usage—Interest—Pro-note—Liability.*

Under S. 92 no oral evidence can be given to show that the interest mentioned in a pro-note is not payable and a custom or usage repugnant to or inconsistent with the terms of a pro-note cannot be proved. (*Fox*, C.J. *and Twomey*, J.) MUTHU ERULAPPA PILLAI *v.* VUNUKU THATHAYYA MAISTRY. 36 I.C 957 = 10 Bur. L T. 242.

Variation of Terms.

———S. 91—*Variation of terms—Oral evidence—Admissibility to prove variation of a registered instrument optionally registrable.*

A mortgage was made by plaintiff to defendant comprising 3 items of property for an advance of Rs. 99 and was registered. In pursuance of this the mortgagee took possession of the first item and another property in lieu of the second item. Plaintiff paid into Court Rs. 99 and claimed redemption of the two items alleging that by an oral agreement the second item in defendant's possession was given him in lieu of second item in the registered deed. Defendant pleaded inadmissibility of extrinsic evidence as regards item 2 and that the claim with regard to this item was barred by limitation. *Held*, (1) that the plaintiff was entitled to lead evidence to prove the two facts, *viz.*, that the defendant's possession of the 2nd item was that of mortgagee and never adverse to him; (2) that his right to possession was terminated by payment of Rs. 99 only tendered. (*Piggott and Walsh*, JJ.) BAIDRAM *v.* TIKA RAM. 39 All. 300 = 39 I C. 528 = 15 A.L J. 257.

———S. 92—*Variation of terms—Agreement complete in itself.*

A contract for sale of land was entered into by means of a writing appearing in the books of one of the parties. It was signed by both parties and witnessed. The defendant said that the agreement appearing in the book did not contain the whole of the agreement arrived at between the parties but there was an oral agreement that if anybody else per chance offered more than Rs. 500 to the 1st defendant above the agreed amount before the expiry of the period in the agreement, the agreement with the plaintiff was to be treated as null and void. *Held*, the evidence about the oral agreement was not admissible. It may very well be that a writing may be an imperfect agreement of which a Court cannot decree specific performance, but if on the face of it, it contains all the terms which would entitle it to be considered as a perfect agreement which could be enforced, then undoubtedly no parol evidence could be adduced so as to alter or add to its terms unless they came within one of the provisos of S. 92. (*Macleod*, C.J. *and Crump*, J.) TUKARAM MAHADAPPA *v.* JAGANNATH. 1923 Bom. 236.

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

———S. 92—*Variation of terms—Oral agreement postponing payment, if can be proved.*

In a suit on a pro-note payable on demand, the promisor cannot, under S. 92 (3) of the Act lead evidence to prove a contemporaneous oral agreement by the promisee that the latter would not present it until he discharges an incumbrance on certain property. (*Macleod*, C.J. *and Shah*, J.) VISHNU RAMCHANDRA *v.* GANESH KRISHNA. 45 Bom. 1155 = 63 I C. 673 = 23 Bom. L R. 488.

———S. 92, proviso (6—*Variation of terms, evidence to—Conduct—Sale or mortgage—Intention of parties.*

Where a document is perfectly plain no extrinsic evidence is required to show in what manner the language of the documents related to existing facts. There may be cases where such extrinsic evidence is required and it will therefore be admitted. But it can only be in such cases where the terms of the documents themselves require explanation and then evidence can be led within the restrictions laid down by proviso to S 92 of the Evidence Act. Where a document has stood more than fifty years it is extremely undesirable to allow evidence to be led to show that the document is not what it appears to be on the face of it. (*Macleod*, C.J. *and Crump*, J.) GANPATHRAO *v.* BAPU TUKARAM. 44 Bom. 710 = 58 I.C. 574 = 22 Bom. L.R 831.

———S 92—*Variation of terms—Benamidar obligor can't be proved the real obligor or obligee.*

Where there is a written contract, the obligor or the obligee might not give parol evidence to shift his liability or to seek his remedy from a third person even though the facts were within the knowledge of the parties on the ground that the obligor on record was only a benamidar. 31 M. 45, Ref. (*Beaman*, J.) LAXMIBAI *v.* KESHAV ANNAJI 33 I C 396 = 18 Bom. L.R. 134.

———S 92—*Variation of terms—Instalment bond—Oral undertaking to waive provision for payment of whole on default—Inadmissible.*

A subsequent oral undertaking on the part of the creditor to waive his right to enforce the payment of the whole amount on two successive defaults of payments of instalments is a variation of the contract and is therefore inadmissible in evidence under S 92 of the Evidence Act. (*Chitty and Walmsley*, JJ.) HARA KUMAR SAHA *v.* RAM CHANDRA PAL 47 I C. 943.

———S. 92—*Variation of terms—Promissory note—Evidence to show that executant was surety.*

In a suit on a promissory note the question whether the defendant-executant of the note, signed it by way of security for others cannot

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

be tried or determined except so far as it affects the question of consideration. (*Chitty and Walmsley*, JJ.) DURGA CHARAN BOSE *v.* LAKHI NARAIN BERA. **47 I C. 917.**

———**S. 92**—*Variation of terms—Evidence of motive.*

Where a 'Barga Kabuliyat' containing a number of terms had as clause that on failure of crops Rs. 25 per annum is to be paid: *Held*, that under S. 92 no oral evidence could be admitted to show that the clause about payment of Rs. 25 was inserted solely for purposes of registration as it was not so stated on the face of the instrument itself. (*Mookerjee and Beachcroft*, JJ.) BASIRUDDIN *v.* AFSARANESSA BIBI. **40 I.C. 833=21 C.W.N. 860.**

———**S. 92**—*Variation of terms—Mortgage—Splitting up of contract.*

Oral evidence to prove an agreement between a mortgagor and mortgagee having the effects of splitting up the contract contained in the registered mortgage-bond is inadmissible. (*Sanderson*, C. J. *and Mookerjee*, J.) KRISHNA CHARAN BARMAN *v.* SAMAT KUMAR DAS. **44 Cal 162=25 C L J 24=34 I.C. 609=21 C.W.N. 740.**

———**S. 92**—*Variation of terms — Sale—Agreement to reconvey.*

Where there is an out and out sale no oral evidence of a contemporaneous oral agreement varying the terms of the sale-deed or importing an agreement to reconvey as part of the same transaction is admissible. 22 I.C. 4; 12 All. 387 (P.C.), Foll. and 22 All. 149 (P.C.) Dist. (*Scott-Smith and Le-Rossignol*, JJ.) MAHOMED MIR *v.* FAIZAL HASSAN. **74 P.R 1918=41 I.C. 418=163 P.W.R. 1918.**

———**S. 92**—*Variation in terms—Unconditional promise to pay—Oral agreement to excuse payment in certain contingencies.*

Where in pursuance of a settlement of a dispute relating to a contract of sale, the contract was cancelled and the defendant gave an unconditional promise in writing to pay a certain sum of money to the plff. as unliquidated damages, *held*, in a suit by the plff. against the deft. on the promise to pay that the defendant cannot prove a contemporaneous oral agreement to be excused payment in certain contingencies. (*Sadasiva Iyer and Spencer*, JJ.) SUBBAIYAR *v.* KUPPUSAMI IYER. **41 M.L.J. 841=68 I.C. 758=(1921) M.W.N. 636.**

———**S. 92**—*Variation of terms—Evidence of surrounding circumstances when admissible.*

Evidence of surrounding circumstances is not admissible for contradicting the terms of a document. Recourse may be had to them only for the purpose of ascertaining and giving effect to the intention of the parties in the document itself. (*Wallis*, C.J. *and Oldfield*, J.) NARASINGERJI *v.* PANUGANTI PARTHASARATHY. **(1921) M.W.N. 819.**

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

———**S. 92**—*Variation of terms—Gift—Conditions—Introduction of.*

To introduce a condition into a document (a gift deed) that is on the face of it unconditional and absolute is to vary the terms thereof within S. 92. Oral evidence is inadmissible to prove that a gift unconditional in its terms was revocable by the donor if future services were not rendered. (*Spencer and Krishnan*, JJ.) RANGA RAO *v.* KITHPRI AMMAL **42 I.C. 268=(1917) M.W.N. 634.**

———**S. 92**—*Variation of terms—Oral agreement releasing one of the joint promisors.*

Evidence is inadmissible to prove a contemporaneous oral agreement between the promisee and one joint promisor that the latter is not liable under a promissory note. (*Sadasiva Aiyar and Spencer*, JJ.) SORANALINGA MUDALI *v.* PACHINAICKEN. **38 Mad 680=14 M.L.T. 559=(1914) M W N. 27=22 I.C. 1=26 M.L.J. 113.**

———**S. 92**—*Variation of terms—Negotiable instrument — Signed as principal—Liability as surety—Oral evidence.*

A person signing a pro-note as principal cannot prove by oral evidence that he was only intended to be surety. An unconditional undertaking to pay cannot be varied by an oral agreement under S. 92 of the Evidence Act. (*Benson and Sundara Aiyar*, JJ.) NARASIMHAMOORTHI *v.* RAMASWAMY. **(1913) M W.N. 336=24 M L J. 91=18 I.C. 696=13 M.L.T. 104.**

———**Ss. 92 and 115**—*Variation of terms—Oral evidence.*

S. 92 of the Evidenee Act should not be read subject to S. 115 of the Act. In a suit for possession of property on the basis of a sale-deed defendant pleaded an oral agreement whereby plaintiff had agreed to return the sale-deed to defendant and to relinquish his claim. *Held*, that by S. 92, the defendant was precluded from proving the oral agreement and therefore the plaintiff was not estopped from prosecuting his suit by reason of such agreement. 29 M 336; 36 C. 920, Ref. (*Benson and Ayling*, JJ.) PICHAMMAL *v.* PONNAMBALA BHATTER. **15 I.C. 326.**

———**S. 92**—*Variation of terms—Sale—Rescission—Mutual consent — Parol evidence.*

The fact that parties to a sale-deed, duly executed and registered, subsequently rescinded it by mutual consent, cannot be proved by oral evidence under S. 92 of the Evidence Act. 2 B. 547, Ref. (*Sundara Aiyar and Ayling*, JJ.) BIJJUKALLU PAPAKKA *v.* YEDDULA ROSI REDDI. **15 I.C. 282.**

———**Ss. 92 and 99**—*Variation of terms—Sale—Evidence to proof gift.*

A party to what is on the face of it a sale-deed cannot in a suit with a person who is no party to the deed produce evidence to show

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

that the deed was really a deed of gift. (*Lyle and Ashworth*, A.J.Cs.) ASHFA HUSSAIN *v.* SYED NAZIR HUSAIN. **6 O.L.J. 863 = 53 I.C. 961 = 22 O.C. 222.**

——S. 92—*Variation of terms—Statement of deceased regarding revocation—Oral evidence as to—Admissibility.*

Oral evidence as to statements alleged to have been made by a deceased executant as having the effect of practically cancelling a registered instrument cannot be admitted unless there are anomalous and suspicious circumstances already in existence. (*Piggott*, J.C. *and Lindsay*, A.J.C.) MIR SYED HASAN *v.* TYAB BEGAM. **26 I.C. 547 = 1 O.L.J. 591.**

——S. 92—*Variation of terms—Bond in writing—Oral evidence to vary terms—Executant claiming to be surety.*

Where a person has executed a bond as the debtor, he cannot adduce oral evidence to prove that he was merely a guarantor. (*Maung Kin*, J.) MAUNG KYA *v.* PERIA KARUPAN CHETTY. **1 Bur. L.J. 157 = 70 I.C. 872 (1) = 1923 Rang. 15 (2).**

——S. 92—*Variation of terms—Promissory note—Joint execution—Oral evidence to prove liability as surety.*

It is not open to one of the executants of a pro-note to adduce oral evidence that he was a surety. (*Young*, J.) VELLIAN CHETTY *v.* WOOMIDI VIRAMMAH. **29 I.C. 760.**

——S. 92—*Variation of terms — Hundi payable at sight—Contemporaneous oral agreement.*

A contemporaneous oral agreement that the whole amount of a hundi payable at sight should not be paid but a less amount, does not fall under the proviso to S. 92 of the Evidence Act and is inadmissible in evidence. (*Fawcett*, A.J.C.) FIRM OF KOOVERBHAN SUKHANAND *v.* FIRM OF MADAN DAS SIROOMAL. **49 I.C. 193 = 12 S.L.R. 70.**

——S. 92—*Variation of terms—Promissory note—Summary suit—Plea of security.*

In a summary suit on a pro-note under O. XXXVIII, the plea that the contract sued on, was a conditional agreement cannot be allowed as the contract embodied in the note is an unconditional agreement to pay and the object of the pro-note is to show that the particular transaction represented by the note is a separate transaction and the intention is that the remedies relative thereto should be separately pursued. (3 O.C. 627, Foll.) (*Crouch*, A.J.C.) KISHOMAL KIROMAL *v.* VISHINDAS SUKHRAMDAS. **9 I.C. 299.**

——S. 93—*Extrinsic evidence—Identification of property.*

Where there is a dispute as regards the identity and extent of the land leased, the Court can look at the correspondence that preceded the lease. (*Rafique and Stuart*, JJ.) SITAL PRASAD *v.* BADRI PRASAD. **20 A.L.J. 907 = L.R. 3 A. 623 = 1923 All. 53.**

EVIDENCE ACT (I o 1872), S. 93.

——S. 93—*Ambiguity—Evidence of conduct.*

Obiter.—Where a lease is ambiguous, evidence of user under it may be given in order to show the sense in which the parties used the language and their intention in executing the instrument whether the ambiguity is latent or patent. (1919) A.C. 533, 537, Ref. (*Mookerjee and Panton*, JJ.) GURU PRASANNA BHATTACHARYA *v.* MADHUSUDAN CHOWDHURY. **26 C.WN. 901 = 64 I.C. 824 = 35 C.L.J. 87.**

——S. 93—*Sale certificate.*

No evidence can be given to contradict the terms of a sale certificate but evidence may be admitted to interpret its terms when they are ambiguous and stand in need of explanation. (*Mookerjee and Beachcroft*, JJ.) BARHAMDEO SINGH *v.* RAM NARAIN SINGH. **22 I.C. 280 = 19 C.L.J. 182.**

——S. 93—*Parol evidence inadmissible when document is ambiguous.*

When the terms of a document are ambiguous on the face of it, parol evidence is not admissible to prove the intention of the executant. (*Shadi Lal and Jones*, JJ.) BARKATRAM *v.* ANANTRAM. **31 I.C. 632 = 185 P.W.R. 1915.**

——S. 93—*Bequest for 'Dharmarth'.*

Where the trust is for 'Dharmarth' without specifying the special charity, oral evidence is inadmissible to prove that 'Dharmarth' was intended to mean only the maintenance of Langar. (*Robertson and Rattigan*, JJ.) GURDIT SINGH *v.* SHER SINGH. **63 P.W.R. 1912 = 106 P.L.R. 1912 = 14 I.C. 247 = 78 P.R. 1912.**

——S. 93—*Language of document defective—Oral evidence not allowed.*

Where the language of a document is defective, oral evidence is not allowed under S. 93 to supply the defect. (*Wallis*, C.J. *and Oldfield*, J.) NARASINGERJI *v.* PANUGANTI PARTHASARTHY. **(1921) M.W.N. 519.**

——S. 93—*Ambiguous expression — Evidence admissible to explain it.*

The expression 'moveables' does not include paddy and therefore evidence is admissible to prove that it was left undivided. (*Seshagiri Aiyar and Bakewell*, JJ.) DURAISWAMI *v.* RAJA GOPAL. **34 I.C. 712 = 4 L.W. 329.**

——S. 93—*Document not ambiguous.*

Evidence of the conduct of the parties is not admissible to prove the intention when the document is not ambiguous. (1911) A.C. 487, Foll. (*Abdur Rahim and Sundara Aiyar*, JJ.) PRESIDENT, TALUK BOARD, PEDDAPUR *v.* CHILAKAMANI. **12 I.C. 146 = (1911) 2 M.W.N. 238.**

EVIDENCE ACT (I of 1872), S. 94

———S. 94—*Misdescription—Extrinsic evidence.*

Oral evidence is admissible to show what properties were really intended to be mortgaged in a case of misdescription or mutual mistake. (*Banerjee and Walsh*, JJ.) MAHABIR PRASAD *v.* MUHAMAD MASHIYUTULLAH.
38 All. 103=32 I.C. 174=14 A.L.J. 15.

———S. 94—*Admissibility of evidence—Document not solely relied on by plaintiff.*

Where the plaintiff put in a certain document which was quite clear in its terms but the plaintiff himself was no party to it and did not rely upon it exclusively for establishing his title. *Held*, that under the circumstances the plaintiff was not debarred from adducing oral evidence in support of his contention. (*Rattigan, and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. **27 P.W.R. 1915= 27 I.C. 701=57 P.L.R. 1915.**

———S. 94—*Interpretation of document—Principle—Evidence.*

Where the language used is plain and applies accurately to existing facts, evidence is not admissible for showing that it was not meant to apply to those facts. Where the words used are definite and unambiguous, the Courts must not travel outside the words used to found or confirm speculations, as to the parties to the document having in fact intended other than what they have said. (*Spencer and Coutts-Trotter*, JJ.) VELAPPA *v.* PALANI.
29 I.C. 201=(1915) M.W.N. 328.

———S. 94—*Extrinsic evidence.*

Where the language of a document is clear and applies without difficulty to the facts of the case, no extrinsic evidence can be admitted for the purpose of affecting its interpretation. 22 A. 149, P.C., Expl. (*Lindsay*, J.C.) YAR MAHOMED KHAN *v.* BAQAR KHAN.
40 I.C. 491=4 O.L.J. 318.

———S. 95—*Decree—Ambiguity as to rate of interest.*

Where a compromise decree provides for interest at 2 per cent. but it is ambiguous whether it is monthly or annually, the Court may hear evidence as to the ordinary meaning of those expressions in documents of that nature. (*Walmsley and Greaves*, JJ.) MOHAMED MASER MAHOMED MEA *v.* ZAFUR MAHOMED. **62 I.C. 702.**

———Ss. 95, 96 and 97—*Relation to existing facts.*

Extrinsic evidence can be admitted to show how the language of a document is related to existing facts or to facts which existed when the document was written. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA *v.* ALLEN J. DELANNEY. **34 I.C. 450=20 C.W.N. 1158.**

———Ss 95 and 97—*Ambiguity—Extrinsic evidence—Admissibility.*

Where the description of property sold is such that one portion of it applies to the whole

EVIDENCE ACT (I of 1872), S. 96.

of the house but the boundaries given below apply only to a portion of the same and both read together do not apply correctly either to the whole house or to a portion of it, a case of latent ambiguity arises. Extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention was to convey the whole house or only a portion of it. (*Wazir Hasan*, A.J.C.) ABDUL GHANI *v.* ASHIQ HUSAIN. **8 O.L.J. 521= 3 U.P.L.R. (J.C.) 93=1922 Oudh 162.**

———Ss. 95, 96, 97—*Mortgage—Erroneous description of the property—Rectification of mistake.*

Where a mortgage deed by a mistake described the mortgaged property as bearing Tauzi No. 6607 but it was found that the mortgagor owned Tauzi No. 9907, *held*, that it was open to the mortgagee to prove by evidence what the property actually mortgaged was and that the mortgagor could not claim any exoneration on the ground of misdescription of the property. (*Jwala Prasad and Ross*, JJ.) MT. WAJIBUNNISSA BEGAM *v.* VALMIKI SAHAY. **71 I.C. 589= 1 Pat. L.R. 80.**

———S. 95—*Latent ambiguity removeable.*

When a description is partly correct and partly incorrect and the former part is sufficient to identify the subject-matter intended while the latter does not apply to any subject, the erroneous part will be rejected on the maxim that a false description will not hurt when it can exist with the subject itself. (*Raymond and Madgaonkar*, A.J.C.) NARAIN DAS *v.* TEKCHAND. **1923 Sindh 42.**

———S. 96—*Latent ambiguity—Admissibility of evidence.*

When an instrument appears on its face to be free from ambiguity, but upon the endeavour being made to apply it to the persons or things indicated, it transpires that the words are equally applicable to two or more persons or to two or more things, this is called a latent ambiguity. In such a case extrinsic evidence is admissible to resolve it. The principle that when an instrument contains an ambiguity, evidence of user under it may be given in order to show the sense in which the parties employed the language used applies to a modern as well as an ancient instrument. (1919) A.C. 533; 1906 A.C. 92; 7 H.L.C. 650, Ref. (*Mookerjee and Chotzner*, JJ.) THE CHAIRMAN, SERAJGUNJ MUNICIPALITY *v.* THE CHITTAGONG COY., LTD. **36 C.L.J 242= 1923 Cal. 32.**

———S. 96—*Mortgage—Provision for payment of revenue by mortgagee—Enhancement of revenue—Liability to pay—Admissibility of evidence.*

Where a usufructuary mortgage merely provides for the payment of revenue by the mortgagee without indicating whether it meant the revenue as assessed at the date of

EVIDENCE ACT (I of 1872), S. 96.

the deed or as it might be reassessed from time to time, evidence may be given under S. 96 of the Evidence Act of facts to show what was meant. In the absence of a contract to the contrary, the mortgagee will pay the revenue as assessed from time to time. The parties must have foreseen the enhancement of revenue within the period allowed for redemption. Evidence of this nature will, however, be outweighed by an express declaration of the parties even two years after the execution of the mortgage-deed. (*Lyle and Ashworth, A. J. Cs.*) FARZAND ALI *v.* SADIQUE HUSSAIN KHAN. **54 I.C. 264=22 O C. 270.**

———**Ss. 95 and 95**—*Mortgage—Oral evidence—Mistake.*

In a suit for possession on a mortgage, oral evidence to prove how the description in the mortgage-deed is related to existing facts is admissible under Ss. 95 and 96, of the Evidence Act. 11 O.C. 93, Dist. (*Kanhaiya Lal, A.J.C.*) RADHA LAL *v* ANGUE.
21 I.C. 429=16 O.C. 213.

———**S 97**—*Ambiguity in description of land—Evidence.*

The ambiguity in the description of the land mortgaged, can be removed by other evidence to show what lands were actually covered by the deed. (*Coxe and Chatterjee, JJ.*) RAM CHARAN DAS *v.* ARSAD ALI. **43 I.C. 721.**

———**S. 98**—*Words used in a particular locality.*

Where a deed contains words used in a particular locality in a particular sense, oral evidence is admissible to explain the meaning of those words. (*Rafique and Stuart, JJ.*) CHHIDDU *v.* MESSRS. CAREU & CO.
63 I.C. 138.

———**S. 98**—*Evidence as to meaning of a word—Extrinsic evidence of usage, if admissible*—(San) *meaning of.*

Extrinsic evidence of usage is admissible to interpret the various words used in documents which present no ambiguity *prima facie*. Evidence may be let in to show that the Bengali term (*San*) does not signify the Bengal year commencing from *Baisakh* but a different period applicable to *Jalkar* tenancies. (*Mookerjee and Panton, JJ.*) RAJA JYOT KUMAR *v* JADU. **64 I.C. 693=34 C.L.J. 160.**

———**Ss. 101, 102 and 103.**

ADMISSION.
ADOPTION.
ADVERSE POSSESSION.
AFFIRMATIVE OF A FACT OR ISSUE.
ALLUVION AND DILUVION.
ANCESTRAL PROPERTY.
APPEAL.
ASSETS.
ASSIGNMENT.
BANKER AND CUSTOMER.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Admission.

BENAMI.
CARRIER.
CONDITION.
CONSIDERATION.
CRIMINAL TRIAL.
COVENANT FOR RENEWAL.
CUSTOM.
DAMAGES.
DATE OF BIRTH.
DECLARATION.
DISCHARGE
DISMISSAL FROM OFFICE.
EJECTMENT.
EXCEPTION TO RULE.
EXECUTION OF DECREE.
EXECUTION OF DOCUMENT.
FRAUD.
GENUINENESS.
GIFT.
GRANT.
HOLDER IN DUE COURSE.
INSANITY.
JURISDICTION.
LAND ACQUISITION.
LEGAL NECESSITY.
LEGITIMACY.
LIMITATION.
MAJORITY.
MALICIOUS PROSECUTION.
MARRIAGE.
MATERIAL ALTERATION.
MINORITY.
MISTAKE.
MORTGAGE.
NEGLIGENCE.
NOTICE.
NOVATION.
OBJECTION TO ONUS.
OFFICIAL RECORDS.
OMISSION TO DISCHARGE ONUS.
ONUS IMMATERIAL'
PARDANASHIN LADY.
PARTITION.
POSSESSION.
PRE-EMPTION.
PRESUMPTION.
RECITALS.
RECORD OF RIGHTS.
SPECIAL AGREEMENT.
SPECIAL PLEA
TENANCY.
TITLE.
TRANSFERABILITY OF HOLDING.
UNDUE INFLUENCE.
VENDOR AND PURCHASER.
WILL.

Admission.

———**Ss. 102 to 105**—*Admission before Sub-Registrar as to receipt of consideration—Effect.*

The admission by a mortgagor, before the Sub-Registrar, that full consideration had been received threw the burden on the mortgagor to prove that it did not pass in full. (*Broadway and Wilberforce, JJ.*) GANGA RAM *v.* RULIA. **61 I.C. 901=2 Lah. 249.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Admission.

——Ss. 101, 102 and 103—*Admission—Thumb marks.*

Affixing of thumb marks to an entry to the effect that the executants admitted their liability for a certain sum of money would throw the burden of proving upon the executants, the circumstances which would free them from the liability. (*Shadi Lal*, J.). GANDA RAM *v.* REHANA. **64 I.C. 91= 3 Lah. L.J. 417.**

——Ss. 101 and 102—*Admission—Marriage.*

Where defendant stated in a criminal case that the plaintiff was his wife, in a suit by the plaintiff to declare that she was not the wife of the defendant, the burden of proving that the plaintiff was married to him is on the defendant. (*Scott-Smith*, J.) DAULAT *v.* KHAN. **81 P.L.R 1915=29 I.C. 194=88 P.W.R. 1915.**

——S. 102—*Admission—Trespass—Extent of.*

Where an encroachment by defendant on plaintiff's property is admitted by the defendant, the plaintiff need not prove the extent of the encroachment but is entitled to claim that the encroachment however small shall be removed. (*Hallifax*, A.J.C.) SONBA *v.* DATTATRAYA. **6 N.L.J. 59=1923 Nag. 192.**

——S. 101—*Admissions shift onus.*

An admission though not necessarily conclusive is sufficient to shift the burden of proof. (*Skinner*, A J.C.) SAKHA RAM *v.* SHRI RAM. **10 I.C. 700=7 N.L.R. 23.**

Adoption.

——Ss. 101, 102—*Adoption.*

In cases of an adoption by immature Hindu widow the onus of knowing that the lady understood the nature of the act and its effect upon her rights is on the person setting up the adoption. **24 Bom. L.R. 726=1922 B. 218.**

——S. 101—*Adoption—Onus on person setting up—Old adoption—Evidence of treatment by members of the family.*

Though the onus of proving old adoption is still on the person setting it up, the evidence of treatment as such by members of the family helps a good deal in discharging the onus. (*Mookerjee and Cuming*, JJ.) KAILAS CHANDRA NAG *v.* BIJAY CHANDRA NAG. **36 C.L.J. 434.**

Adverse possession.

——S. 102—*Adverse possession—Burden of proof.*

Where the suit is resisted on the ground of acquisition of title by prescription, the burden of proof is not on the plaintiff but on the defendant to prove his adverse proprietary title. (*Gokul Prasad*, J.) RAGHA MAL *v.* ABDUS SATTAR. **1923 All. 565.**

——S. 102—*Adverse possession—Title by —Onus on person setting up.*

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Affirmative of a fact or issue.

When a person sets up his rights to the property by reason of adverse possession, the onus of establishing such right is on him. 39 Mad 617 P.C. Foll. and 20 All. 182, overruled. (*Walsh and Ryves*, JJ.) JAI CHAND *v.* GIRWAR SINGH. **41 All. 669=52 I C. 366= 17 A.L.J. 814.**

——S. 103—*Adverse possession.*

In cases governed by Art. 144, if the plaintiff has established a clear title, the onus of proving adverse possession is on defendant. (*Mookerjee and Chotzner*, JJ.) KHATUM *v.* TULASI CHARAN DAS. **36 C L J. 472= 1923 C. 82.**

——S. 101—*Adverse possession — Person alleging must prove.*

Person alleging adverse possession must prove it. (*Mookerjee*, A.C J. *and Fletcher*, J.) BEPIN BEHARI SAHA *v.* CHARU CHANDRA GHOSE. **35 C.L J. 192.**

——S. 102—*Adverse possession—Landlord and tenant—Tenant setting up adverse possession.*

Where a tenant sets up adverse possession against his landlord, and the Revenue Records show him to be a tenant, the onus is on him to show he is not a tenant. The onus is not discharged by the proof that the rent which he paid did not exceed the amount of the revenue and the cesses. (*Martineau*, J.) RAM DAS *v.* CHANDI. **1923 Lah. 38 (1).**

——S. 102—*Adverse possession.*

Onus of proving adverse possession lies on the person setting up. **9 O.L.J. 262= 1922 Oudh. 231.**

——S. 102—*Adverse possession — Joint Hindu family — Partition —Adverse possession.*

In a suit for partition of a property which devolved upon the parties jointly, the onus is on the party alleging exclusive title to it by adverse possession to prove the allegations. (*Lindsay*, J.C.) JAGANNATH *v.* KEDAR. **24 I.C. 633.**

——S. 103—*Adverse possession—Mortgagor and mortgagee.*

The person out of possession must prove the nature of the transaction by which the person in possession obtained that possession. This rule does not apply when the original relation of the parties is that of mortgagor and mortgagee. The party who alleges that the said relation has ceased, must prove it. (*Twomey*, J.) MAUNG CAIT TON *v.* MAUNG AUNG. **17 I.C. 913=5 Bur. L.T. 161.**

Affirmative of a fact or issue.

——Ss. 101, 103—*Affirmative of fact or issue—Plea of Wagering Contract.*

Where a defendant pleads that the contract was of the nature of a wager, the onus lies on

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Affirmative of a fact or issue.

the defendant to prove it. (*Macleod and Shah, JJ.*) RAJMAL RAM NARAIN *v.* BUDAN SAHEB. **24 Bom. L.R. 115=66 I.C. 943= 1922 B. 81.**

———**Ss. 101, 102**—*Affirmation of a fact or issue.*

It was for the land-lord to prove that the agent acted outside the powers given to him. (*Teunon and Newbould, JJ*). AKHOY KUMAR GOUS *v.* ERADATULLA KAZI. **64 I.C. 883.**

———**Ss. 102 and 103**—*Affirmative of issue.*

From first principles, it is clear that the issue must be framed by the party who states the affirmative and not by the party who states negative. (*Carnduff and Chatterjee, JJ*). HARI MONI DEBI *v.* MOLI SHEIKH. **16 I.C. 80=16 C.W.N. 779.**

———**S. 101**—*Affirmative of fact.*

Where a surety-bond was executed on behalf of the managing member of a partnership whereby liability for loss arising in default was on the surety, the loss is to be proved by the other partners. (*Abdul Raoof and Harrison, JJ.*) KASHI RAM *v.* MT. HARO. **3 Lah. L.J. 214=1922 L. 235.**

———**S. 103**—*Affirmative of fact—Limited owner—Compromise decree—Malabar law.*

Where a limited owner like the *karnavan* of a Malabar tarwad compromises a case, the onus is on those claiming under the compromise to show it is fair and binding on the estate. At the same time it is not obligatory on a limited owner to contest a hopeless case. (*Oldfield and Ramesam, JJ.*) SUBRAMANIA PATTER *v.* KIZHKKARA UTHENANTHIL. **16 L.W. 620=31 M.L.T. 484= 44 M.L.J. 696=1922 M. 519.**

———**S. 101**—*Affirmative of fact—Hindu widow—Descent of property to — Onus of proving.*

The onus of proving that the property descended to a female, in her capacity of Hindu widow, lies upon the person making the allegation. (*Wazir Khan, A.J.C.*) JAGMOHAN SINGH *v.* RAMDAYAL SINGH. **61 I.C. 135= 8 O.L.J. 4.**

———**S. 102**—*Affirmative of a fact—Onus.*

Where a defendant pleads 8occurrence of a fact, it is for him to prove that occurrence and not for the plaintiff to prove its non-occurrence. (*Lindsay, J.C.*) ALI MUHAMMAD KHAN *v.* SAJJIDI BEGAM. **33 I.C. 516.**

Alluvion and Diluvion.

———**Ss. 102 and 103**—*Alluvion and diluvion—Suit for possession—Onus.*

In a suit to recover possession of a certain land as being a contiguous accretion to the other plots belonging to plaintiff, the latter must establish the nature of accretion. (*Fletcher and Huda, JJ.*) MAHOMED ASHRAF *v.* UMED ALI. **46 I.C. 555.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Appeal.

Ancestral property.

———**S. 103** — *Ancestral Property — Self-acquisition.*

In a joint Hindu family where there is a nucleus of ancestral property with the assistance of which subsequent acquisitions have been made, the burden of proving that any particular property is separate, lies on the person who asserts it. (*Lindsay and Daniels, JJ.*) SUKHNANDAN *v.* BRIJNANDAN. **1923 A. 574.**

———**S. 102**—*Ancestral property.*

The *onus probandi* of showing that certain property is ancestral lies on the party asserting it. 12 C.W.N. 1049; 35 C. 1039; 18 M.L.J. 379 Foll. (*Rattigan and Shadi Lal, JJ.*) MOHAMMAD UMAR *v.* NAWAB DIN. **217 P.L.R. 1914=24 I.C. 678= 127 P.W.R. 1914.**

Appeal.

———**S. 102**—*Appeal—Balance of probabilities—Onus on appellant to show judgment appealed against is wrong.*

In appeals the burden of showing that the judgment appealed from is wrong lies upon the appellant. If all he can show is nicely balanced calculations which lead to equal possibilities of the judgment on either the one side or the other being right, he has not succeeded. (*Lord Buckmaster,*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL. **20 A.L.J. 22=26 C.W.N. 322= 35 C.L.J. 116=42 M.L.J. 253= (1922) M.W.N. 95=24 Bom. L.R. 346= 15 L.W. 417=L.R. 3 P.C. 77= 30 M.L.T. 234=3 Pat L.T. 311= 1922 P.C. 39.**

———**S. 102**—*Appeal—Onus on appellant of showing that decree appealed is wrong.*

The onus of proving that the judgment and decree appealed against are wrong is on the appellant. (*Woodroffe and Cuming, JJ*) TARAMONI CHAUDHURANI *v.* GOPAL DAS CHAUDHURY. **65 I.C. 182.**

———**S. 102**—*Appeal—Onus on appellant to show judgment is wrong.*

It is incumbent on an appellant to show that the judgment appealed from is wrong but if the decision of the lower Court is purely arbitrary, unsupported by any reasons, the appellate Court can come to its own conclusions. (*Broadway and Martineau, JJ.*) FIRM OF PROBHU DIAL BANWARI LAL OF DELHI *v.* DINA NATH KAPUR. **1922 Lah. 127.**

———**S. 103**—*Appeal—Proof of wrong judgment.*

The appellant must show that the judgment appealed from is wrong. (*Rattigan and Scott-Smith, JJ.*) GHULAM NABI *v.* ALLAH DIN. **241 P.L.R. 1913=19 I.C. 965= 143 and 204 P.W.R. 1913.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Assets.

Assets.

———S. 102—*Assets—Extent of.*

Where a decree is passed against the legal representative of a deceased person the onus of showing the extent of the assets he received and the application thereof is on the legal representative when the decree-holder proves that he had actually received some assets. 30 M. 454, 2 I.C. 18; 12 I.C. 253; 26 M. 35 Foll. (*Sadasiva Aiyar and Moore*, JJ.) RAJAH OF KALAHASTI *v.* PRAYAG DOSSJEE VARU.
30 M.L.J. 391=35 I.C. 224=(1916) 2 M.W.N. 92.

Assignments.

———S. 103—*Assignment—Equities—Proof that assignment is free from existing right.*

The onus is on the assignee to prove that the assignment is free from an existing right. (*Spencer, Coutts-Trotter and Napier*, JJ.) VENKATA SUBBIAH CHETTY *v.* SUBBA NAIDU. **18 M.L.T. 533=(1915) M.W.N. 822=31 I.C. 152=2 L.W. 977.**

Banker and Customer.

———S. 102—*Banker and customer—Deposit of money—Burden of proof.*

The burden of proving that money was paid into the bank is on the constituent and the burden is discharged when it is shown that money was made over to the cashier or some employee of the Bank authorized to receive money and it is not necessary either to allege or prove fraud on the part of the Bank officials. (*Fox*, C.J. *and Parlett*, J.) MANIKJEE PALONJEE *v.* NEDERLANDSCHE HANDEL.
34 I.C. 176.

Benami.

———S. 101—Benami—*Onus on person claiming against tenor of deed.*

In *Benami*, onus is on person claiming against tenor of deed. (*Mookerjee and Rankin*, JJ.) ABDUL LATIF KAZI *v.* ABDUL HUQ KAZI. **28 C.W.N. 62=1924 Cal. 523.**

———Ss. 101, 103—*Benami—Onus on party alleging.*

Primarily the party alleging that a person is a *benamidar* is bound to prove it. (*Newbould and Cuming*, JJ.) TUKA MIAH *v.* BABIN CHANDRA MAZUMDAR. **1923 Cal. 292 (2).**

———S. 101—*Benami.*

In India, *Benami* transactions are familiar; the *onus* is on a person who sets up that it is sham. (*Mookerjee and Chotzner*, JJ.) PROMODE KUMAR ROY *v.* KALI MOHAN SAHA. **36 C.L.J. 396=27 C.W.N. 805=1923 Cal. 228.**

———S. 103—*Benami.*

The burden of proving that a conveyance standing in the name of one person is *benami* for another lies on the person who so raises

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Benami,

plea of *benami*. (*Mookerjee and Cuming*, JJ.) JASODA LAL PAL *v.* BALARAM PODDAR.
35 C.L.J. 589=1922 Cal. 488.

———Ss. 102 and 103—Benami—*Consideration—Recital of payment in Kobala—Presumption.*

In a suit for possession on the basis of a sale-deed the vendee has to prove his title where the vendor who is in possession pleads that he is only a *benamidar*. The vendee shows a *prima facie* title by producing and proving his conveyance which contains a recital of the receipt of consideration. In such a case, the *onus* is upon the vendor to show non-payment of consideration. (*Jenkins*, C.J. *and N. Chatterjee*, J.) DURGA CHARAN CHANDRA *v.* KHORDA COY., LTD. **29 I.C. 696=20 C.W.N. 254.**

———S. 103—Benami—*Money paid by another.*

Where property is purchased in the name of another the burden of proving that the purchaser has no beneficial interest in the property and that the purchase is really *benami* lies on the person alleging it. Payment of money by one and purchase in another's name does not establish a *benami* transaction if the payer intended to benefit the ostensible purchaser. (*Kensington*, C.J. *and Shah Din*, J.) MAHIDITTA MAL *v.* MRS. NICHOLSON.
183 P.W.R. 1913=19 I.C. 770=224 P.L.R. 1913.

———S. 102—Benami—*Nominal sale.*

The burden of proving that a sale is nominal lies primarily on the person alleging it, but where the vendee can produce none of the documents which form the basis of his case and there is no satisfactory evidence as to possession, the burden of proof is thrown on him. (*Wallis*, C.J. *and Phillips*, J.) RAGHNATHACHARI *v.* ARAVAMUTHU AIYANGAR.
34 I.C. 617.

———Ss. 102 and 103—Benami—*Sham transaction*—Onus—*Sale-deed—Non-delivery of possession.*

In a suit for a declaration that a sale-deed was a nominal transaction the burden of proof is on the plaintiff to prove any circumstances relied on for the purpose of showing that the sale was not real and honest. The question whether possession passed under the sale to the vendee is a material factor though not a decisive circumstance. Even here the *onus* is on the plaintiffs to prove that possession did not pass and not on the defendant to show that possession did pass. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SAMA LAXMIAH CHETTY *v.* MANIKKA CHETTY. **16 I.C. 749.**

———Ss. 101, 103—Benami—Onus *of proof—Sale by husband in favour of wife.*

When a sale-deed executed by a husband in favour of his wife is challenged as a *benami* transaction, the *onus* is upon the person challenging it to prove by evidence that the

EVIDENCE ACT (I of 1872), Ss. 101, 102, 10 —Benami.

apparent state of things is not the real state of things. Mere suspicion does not amount to proof. The mere fact that the husband continued to live in the house or that he had some debts is insufficient. The production of the sale-deed from one's custody is sufficient proof of his title unless and until some evidence is adduced by the other side to disprove it. (*Mullick and Kulwant Sahay*, JJ.) PURAN MAL *v.* MT. DILWA.

4 Pat. L.T. 54=72 I.C. 1003 (2)= 1924 P. 33.

———S. 103—Benami.

Where a deed is in the name of a defendant the burden is on the plaintiff to show that it is a *benami* transaction. (*Coutts and Das*, JJ.) RAMPALI RAUT *v.* MAHANTH HANUMAN SARAN. **1 P.L.R. 235=1923 Pat. 142= 1923 P. 803.**

Carrier.

———S. 103—*Carrier—Railway Risk Note Form B—Loss of goods—Burden of proof.*

If the plaintiffs wish the Court to believe that there was wilful neglect or theft by railway servants, it lies on them to prove the fact. In the absence of proof of wilful neglect or theft by railway servants the administration is to be held free from responsibility in the case of a risk note in Form B. If, however, neglect or theft by railway servants is proved the administration will escape liability for loss, if proof is given of robbery from a running train. (*Scott*, C.J. *and Hayward*, J.) B. B. AND C. I. RAILWAY *v.* RANCHHODLAL.

43 Bom. 769=52 I.C. 516= 21 Bom. L.R. 779.

———S. 101—*Carrier — Bill of lading— Shortage—Burden of proof on plaintiff.*

Where a bill of lading expressly states "Weight, contents and value when shipped unknown" the onus of proving shortage to the goods shipped is on the person asserting it. (*Krishnan*, J.) SUBRAMANIYA CHETTY *v.* THE BRITISH INDIAN STEAM NAVIGATION COMPANY. **17 L.W. 808=1923 Mad. 823 (1).**

———S. 102—*Carrier.*

Liability under Railways Act for wilful neglect and default on the part of Railway lies on the consignor. (*Jwala Prasad*, J.) G.I.P. RY. COY. *v.* JITAN RAM. **3 P.L.T. 220= 1922 P. 17.**

———S. 103—*Carrier—Bill of lading— Condition of goods.*

In a suit for damages on the ground of damage done to goods shipped, the bill of lading is *prima facie* evidence that the description of the goods therein with the actual condition of the goods. If the shippers want to escape liability, the onus is on them to show the goods were in a damaged condition when shipped. (*Robinson*, C.J. *and May Oung*, J.) BIBBY BROTHERS *v.* CHARLES COWIE & CO.

1 R. 146=1924 Rang. 25

EVIDENCE ACT (1 of 1872), Ss. 101, 102, 103—Consideration.

———S. 102—*Carrier—Bailment—Loss of goods*—Onus *on bailees.*

In a suit for damages for loss of goods entrusted to a bailee, the burden of proof lies on him to show that such care as a man of ordinary prudence would have exercised, was taken by him. (*Pratt*, JJ.) MAUNG PO THAIK *v.* MAUNG THA BYAW.

1923 Rang. 74 (2).

Condition.

———S. 102—*Condition—Mortgage—Operation of.*

A person, setting up a condition that a registered mortgage-deed should not operate till the whole consideration money is paid, must prove it. (*Mullick and Jwala Prasad*, JJ.) MAKKAN LAL *v*, HANUMAN BAKSH.

1 P.L.W. 250=38 I.C. 877=2 P.L.J. 168.

Consideration.

———Ss. 102 and 103—*Consideration— Execution and registration of bond.*

Mere execution and registration of bond without any other proof is not conclusive to prove that consideration passed between the parties. Oral evidence to explain the purpose of a registered deed purporting to be a bond is admissible. (*Sir John Edge.*) LALU SAHI *v.* RAJBANS BHARTHI. **24 M.L.J. 355= 13 M.L.T. 191=15 Bom. L.R. 452= (1913) M.W.N. 155=17 I.C. 842= 17 C.L.J. 284 (P.C.).**

———S. 101—*Consideration — Promissory Note—Failure of consideration — Defendant when entitled to a decree on plaintiff's evidence.*

Though the onus of proving want of consideration is on deft. he can avail himself of the plffs.' statements from the witness-box, leading to the inference that no consideration passed. (*Mears*, C.J. *and Banerjee*, J.) KUNWAR MUHAMMAD SHAFI KHAN *v.* KUNWAR MUHAMMAD MOHAZZAM ALI KHAN.

67 I.C. 681=4 U.P.L.R. (A.) 46.

———Ss. 102 and 103—*Consideration— Admission—Onus—Recitals—Presumption.*

The recital of receipt of consideration in a mortgage document is *prima facie* evidence of its having passed not only against the mortgagor but also persons claiming under him subsequent to the date of mortgage. (*Richards*, C.J. *and Tudball*, J.) BABU *v.* SITA RAM.

36 All. 478=26 I.C. 426=12 A.L.J. 806.

———Ss. 102 and 103—*Consideration—Execution admitted by mortgagor but denied by transferee—Onus.*

In a suit on a mortgage against the mortgagor and his transferee the mortgagor admitted execution but denied consideration and the transferee denied both execution and consideration; *held*, that the burden of proving the payment of consideration lay upon the plaintiff. ((*Karamat Husain and Tudball*, JJ.) SALUK SINGH *v.* AJUDHYA PERSHAD.

15 I.C. 121=10 A.L.J. 108.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Consideration.

———S 102—*Consideration—Mortgage.*

The fact that a usufructuary mortgagee took no steps to recover possession of the mortgaged property until the last day of the limitation raises a presumption that he did not consider himself entitled to it; and therefore, the Court below was justified in saying that the burden of proving consideration lies on the mortgagee. (*Stanley*, C.J. *and Banerjee*, J.) BEHARI *v.* RAMCHANDAR. **38 All. 483 = 10 I.C. 927 = 8. L.J. 368.**

———Ss. 102, 103—*Consideration—Recitals in bond—Denial of execution found to be false—Inference of consideration.*

In a suit to enforce a bond the defendant denied execution as well as consideration. The Court found that the bond was genuine and from the recital therein drew an inference that the bond was supported by consideration. *Held*, that there was no error of law committed by the lower Court. (*Newbould and Panton*, JJ.) JADU MONDAL *v.* JAGENDRANATH BANERJEE. **1923 C. 319 (1).**

———S. 103—*Consideration and good faith.*

Good faith and valuable consideration gives an assignee of document of title right of stoppage in transit but the onus of having good faith and valuable consideration is on the assignee himself. (*Sandersnn*, C.J. *and Richardson*, J.) RASH BEHARI KARURI *v.* NARAIN DAS DORILAL. **27 C.W.N. 231 = 50 C. 399 = 1923 Cal. 182.**

———S. 102—*Consideration—Recitals in sale-deed.*

Where a mortgage document was executed by the father of the deft. and contained a recital that the consideration had been received by the executant, the burden lay upon the executant or his representative to prove that the recital was untrue and to satisfy the Court how he became a party to a document which contained an untrue recital of this description. (*Mookerjee and Rankin*, JJ.) BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. **74 I.C. 178 = 38 C.L.J. 114.**

——Ss. 102 and 103—*Consideration—Recital in deed—Stranger.*

Where a mortgagor denies consideration for a mortgage duly executed by him and the deed contains a recital that money was paid, the onus is upon the mortgagor to prove the falsity of the recital. If the claim is contested by a stranger who denies execution and consideration, the onus is on the mortgagee to prove his case. 12 M.I.A. 282; 6 Cal. 268, foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. **25 C.W.N. 942 = 66 I.C. 694 = 34 C.L.J 338.**

———S. 102—*Consideration—Recitals.*

Where a registered conveyance of land recites that consideration is fully paid the plaintiff in his suit to recover consideration must prove that the entry in the document is incorrect. (*Teunon and Choudhuri*, JJ.) SHAHED ALI MIA *v.* MUHAMMAD FAZALAR RAHIMAN. **57 I.C. 954.**

———S. 102—*Consideration*—Hiba-bil-iwaz—*Payments of consideration.*

The person in whose favour a *Hiba-bil-iwaz* is executed must show that the consideration as described in the instrument was paid. (*Sanderson*, C.J. *and Mookerjee*, J.) SHAIK NAWAB JAM *v.* SAFIUR RAHMAN. **38 I.C. 882 = 25 C.L.J 286.**

———S. 102, 103—*Consideration—Want of—Onus on defendants.*

Where in a suit on a promissory note the defendants admit execution but plead want of consideration, the burden is upon them to substantiate their plea. (*Broadway and Abdul Qadir*, JJ.) MAHOMMAD HUSSAIN *v.* RAM LAL. **5 Lah. L.J. 198 = 1924 Lah. 39.**

———S. 101—*Consideration — Registered deed—Proof of consideration not received by him.*

Where plaintiff recited and admitted the receipt of a sum in the registered document the burden of proof to show, that he did not receive it, is on him. (*Le-Rossignol and Harrison*, JJ.) MANGALI *v.* BIDHA LAL. **1923 Lah. 404.**

———S. 102—*Consideration—Some defendants not admitting execution.*

Where a document was couched in the following terms: "Undersigned promise to pay to A the sum of Rs. 1,000 payable during the period of one year without interest." *Held*, that the burden of proof was on the executee to prove consideration, where executant admitted only execution while the other members of the family of the executant denied both execution and consideration. 100 P.R. 1915, Dist. (*Abdul Raoof and Moti Sagar*, JJ.) RAGHU NANDAN *v.* BUDHU MAL. **1923 Lah. 346.**

———S. 101—*Consideration — Negotiable instrument—Want of consideration—Onus on defendant—Question, one of law.*

Onus lies on deft. to prove total or partial want of consideration where he admits consideration. (*Broadway and Abdul Quadir*, JJ.) GURDIT SINGH *v.* KARAM DAD. **4 Lah. L.J. 199.**

———Ss 102, 103—*Consideration—Receipt of—Admissions.*

Where a mortgagor admits before the Sub-registrar that full consideration had been received, the onus of proving that full consideration had not passed is on the person making the admission. 26 I.C. 913. foll. (*Broadway and Wilberforce*, JJ). GANGA RAM *v.* RULIA. **64 I.C. 901 = 2 Lah. 249.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Consideration.

——S. 101—*Consideration—Deed formally registered.*

Where a document is formally registered and the receipt of consideration is recorded therein, the burden of proving the non-payment of consideration is on the person asserting the non-payment. But in the case of an account book, the onus lies on the person asserting payment. (*Broadway and Abdul Rooj*, JJ.) RULIA SINGH *v.* TUNIMAL. **60 I.C. 730.**

——S. 102—*Consideration — Promissory note—Admission of execution.*

Where in a suit on a pro-note the defendant admits execution but pleads want of consideration the burden of proof is on him to prove his plea. (*Shadi Lal and Martineau*, JJ.) ANANT RAM *v.* THE BHARAT NATIONAL BANK, LTD. **56 I.C. 638.**

——Ss. 102 and 103—*Consideration—Presumption as to receipt of.*

The vendor's admission at the time of registration of his having received consideration throws the onus on him to show that he did not in fact receive it; and the onus is not discharged by mere denial of such receipt. (*Scott-Smith and Shadi Lal*, JJ.) RAHMAT *v.* ZABITA. **37 I.C. 874=29 P.W.R. 1917.**

——S. 103—*Consideration—Onus of proof—Mortgage.*

In a suit brought against the heirs of an original debtor for the recovery of moneys advanced on the security of mortgage-deeds the plaintiff must establish that full consideration passed. (*Chevis and Le Rossignol*, JJ.) INDAR NARAIN *v.* NANAK CHAND. **74 P.W R. 1916=32 I.C. 454= 58 P.R. 1917.**

——S. 102—*Consideration — Promissory note—Admission of execution.*

If a defendant admits execution of the pronote and pleads absence of consideration the onus is upon the plaintiff, but such onus is shifted to the defendant as in this case he was a man of business with sound knowledge of English who had admitted having received a portion of the consideration and signed a pro note expressly providing that it was 'for value received'. 17 P.R 1888, Dist. (*Shah Din and Le Rossignol*, JJ.) CHIRAG DIN *v.* BHAGWAN DAS. **100 P.R. 1915=32 I.C. 40=189 P.W.R. 1915.**

——S 103—*Consideration—Want of.*

The onus is on executant to prove non-receipt of consideration after he had acknowledged to have received it at the time of registration. (*Johnstone*, C.J. *and Le Rossignol*, J.) JOWALA SINGHA *v.* TULSA RAM. **78 P.R. 1915= 31 I.C. 212=173 P.W.R. 1915.**

——S 103—*Consideration — Burden of proof of non-receipt of full consideration.*

A mortgagor disputing the receipt of a portion of the mortgage money which he admitted to be due by him before Sub-Regis-

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Consideration.

trar, has to show that the consideration did not pass in full. (*Rattigan and Scott-Smith*, JJ.) KISHEN CHAND *v.* SOHAN LAL **20 P.L.R. 1915=26 I.C. 918= 215 P.W.R. 1915.**

——Ss. 102 and 103—*Consideration—Delay in Suing for possession—Registered sale.*

When, after a very long delay the vendee sues for possession of the property sold to him the onus is on him to show consideration for the sale. 68 P.R. 1900, Fol. (*Kensington*, C.J. *and Beadon*, J.) BHAGWAN DAS *v* RAM BAI. **53 P.R, 1914=236 P.L R. 1914= 25 I.C. 538=152 P.W.R. 1914.**

——S. 101—*Consideration—Old mortgage—Presumption.*

The passing of consideration for a mortgage-deed which is more than 30 years old and which was never questioned till the suit thereon was brought, should be taken as proved even though there is no direct strong evidence as it is expected in recent transactions. (*Sadasiva Aiyar and Spencer*, JJ.) JAGANA SANYASIAH *v.* M. P. ATCHANNA NAIDU. **42 M.L J. 339= 70 I.C. 759=16 L.W. 289.**

——Ss. 102 and 103—*Consideration—Acknowledgment of receipt of consideration—Effect of.*

Mere proof of acknowledgment of receipt of consideration does not necessarily shift the burden or must not necessarily be taken as insufficient to shift the burden of proof. (*Ayling and Tyabji*, JJ.) GADIAN CHETTY *v.* VEERAPPA CHETTI. **26 I.C. 899= 28 M.L.J. 92.**

——Ss. 102 and 103—*Consideration—Proof—Registration not conclusive—Securities without consideration.*

Where in a suit on a hypothecation bond, the consideration is denied, the mere execution and registration of a bond, without proof that money had passed, without documentary evidence to show what sums were advanced, without production of account books, is not conclusive on the point that consideration passed between the parties. Securities in respect of which there was no consideration could not be made securities for other unconnected expenses defrayed. (*Sir John Edge.*) LALU SAHI *v.* RAJBANS BHARTHI. **13 M L.T. 191= (1913) M.W.N. 155=24 M.L J. 355= 17 C.L.J. 284=17 I C. 842= 15 Bom. L.R. 452.**

——S. 103—*Consideration—Failure of—Onus.*

Plaintiff brought a suit to set aside a release deed on the ground that there was failure of consideration. Defendant admitted that the consideration mentioned in the deed was false, but contended that there was consideration. *Held*, that it lay on the plaintiff to prove want of consideration. (*Munro and Sankaran Nair*, JJ.) RANIA BIVI *v.* KADIR BATCHA ROWTHER. **10 I.C. 801=9 M.L.T. 480.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Consideration.

——S. 103—*Consideration — Assignment —Burden of proof.*

The assignee must prove the reality of the consideration in the case of an assignment. (*Krishnaswami Aiyar and Ayling*, JJ.) AYYALAMMAI SARVAIGARAR *v.* NALLASWAMI PILLAI. 10 I.C. 291=9 M.L.T. 407.

——Ss. 102 and 103—*Consideration — Sale-deeds—Rival purchasers.*

In a dispute regarding the title of two rival purchasers of the same property, when the vendor in the first sale-deed admits receipt of consideration, the onus of proof lies on the subsequent purchaser to show that consideration was not paid. The fact that the first purchaser did not get possession for a long time does not prove absence of consideration. (*Batten*, J.C.) MT. KASTUR BAI *v.* BALIKAM. 1923 Nag. 15.

——S. 103—*Consideration — Fiduciary relation—Sale to a person in a position of active confidence.*

In the case of a person in a position of active confidence the onus is on the vendee to prove that the transaction was for consideration and for good faith. 11 M.I.A. 551, Fol. (*Batten*, A.J.C.) SURATSINGH *v.* BALDEO. 17 I.C. 363=8 N.L.R. 160.

——S. 103—*Consideration—Non-receipt of.*

The burden of proof as to the non-receipt of the consideration money for a bond, the execution of which is proved, is on the executant. (*Kanhaiya Lal*, A.J.C.) LACHMAN PRASAD *v.* HARDEO BAKSH. 37 I.C. 31= 3 O.L.J. 473.

——S. 103 — *Consideration — Mortgage—Want of* onus.

The *onus* of proving want of consideration lies heavily on the party alleging it. But if it is found that he is a man of weak intellect and hard of hearing who played the part of an irresponsible puppet in the hands of the opposite party, the *onus* is mitigated, and the Court might for its own satisfaction demand proof of consideration from the opposite party. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL BAHADUR *v.* ZALIMSINGH. 27 I.C. 581= 2 O.L.J. 1.

——S. 103—*Consideration—Want of—Undue influence.*

Where a defendant admits execution of a deed but pleads failure of consideration and undue influence, the burden of proving these lies on him. (*Lindsay*, A.J.C.) DEBI PRASAD *v.* SHEO NARAIN. 21 I.C. 581.

——S. 103—*Consideration — Assignment.*

Where receipt of consideration before the Registering Officer is admitted in a deed of assignment, the *onus* is on the assignor to prove want of consideration. (*Piggott*, J.C. *and Sabonadiere*, A.J.C.) NAND KISHORE *v.* MANGAL DIN. 21 I.C. 8.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Consideration.

——Ss. 102 and 103—*Consideration—Purchaser of equity of redemption.*

A purchaser of an equity of redemption cannot be in a better position than the mortgagor himself; so the burden would lie on the purchaser to prove want of consideration. Where in such cases the mortgagor himself has not raised the plea of undue influence or unconscionable bargain, the purchaser who buys the property subject to such a mortgage cannot take those pleas and ask the Court to reduce the interest on such grounds. (*Lindsay*, A.J.C.) RAM KUMAR *v.* DWARAKA PRASAD. 15 I C 5=15 O C. 211.

——S. 102—*Consideration—Portion left in the hands of the mortgagee—Burden of proof.*

If under the terms of a mortgage a portion of the consideration is left with the mortgagee for payment to some creditors, the mortgagee in the first instance has to prove payment. The execution of mortgage and the proceedings at the time of registration involve no admission that the mortgagee had fulfilled his part of the contract. (*Piggott*, J.C.) BHIKAM SINGH *v.* RADHA KUNWAR. 14 I.C. 136.

——Ss. 102 and 103—*Consideration—Want of—Admission in sale-deed.*

Where the execution of a sale-deed is admitted by the defendant, the burden is on him to establish that consideration did not pass. (*Coutts and Das*, JJ.) HARI PRASAD CHOWDHURY *v.* HARIHAR PRASAD CHOWDHURY. (1923) Pat. 20=1923 P. 205.

——Ss. 102 and 103—*Consideration—Sale of land—Title-deeds handed over to vendee—Presumption.*

Mere denial by the vendor of the receipt of the consideration acknowledged in the recitals of deed of sale is not in all cases sufficient to cast upon the vendee the burden of proving the payment of the consideration especially when the vendee has been in possession and enjoyment of the subject-matter and in possession of the title-deeds. (*Roe and Jwala Prasad*, JJ.) RAMPAL RAM *v.* SUBA SINGH. 53 I.C. 83= 4 P.L.J. 517.

——S. 102 — *Consideration — Onus — Recitals.*

If a mortgage-deed expressly mentions the passing of consideration from the mortgagee to the mortgagor, the *onus* of proving the contrary in a suit on the mortgage is on the mortgagor and his representatives in interest. (*Chamier*, C.J. *and Sharfuddin*, J.) PADAM KUMAR *v.* NANHU SINGH. 39 I.C. 635= 1 P.L.W. 413.

——Ss. 102 and 103—*Consideration—Presumption—Evidence Act, S. 114.*

Where it is pleaded that no consideration passed for a mortgage the burden is on the mortgagor to establish it. Where the statement of mortgagor renders it probable that he

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Consideration.

executed the document without consideration, the *onus* is shifted on to the other side, but where the document is in the hands of the mortgagee the presumption is that consideration has passed. (*Roe and Jwala Prasad*, JJ.) EBADUT ALI *v.* MAHAMMAD FAREED.
1917 Pat. 40=33 I.C. 56=3 P.L.W. 226.

———**S. 102**—*Consideration—Sole-deed executed and registered—Admission of consideration before Registrar—Shifting of* onus.

When a person having executed and delivered a conveyance of his property and also getting it registered the sale deed contains a recital of receipt of consideration, the burden of proving want of consideration for the sale is on the vendor. If the vendor pleads that the sale was *benami* the *onus* would be on him to prove his plea. Where, however, it is found that the vendor was in possession of the property for 18 years after the sale and had enjoyed the rents and profits of the same and exercised rights of ownership over it, the burden of proving consideration is shifted on to the purchaser. 8 A. 461 ; 33 A. 483, Foll. (*Robinson* C.J., *and Maung Kin*, J.) J. H. POWER *v.* DAW SHWE GON. **1 Bur. L.J. 22.**

———**S. 102** — *Consideration — Fraud —* Prima facie *proof—Shifting of* onus.

Where in a suit to set aside a registered sale-deed on the ground of a fraud practised upon the creditors and want of consideration, the burden of adducing *prima facie* proof is on the plff. but when this is done the *onus* is shifted on to the defts. to prove consideration. (*Robinson*, C.J., *and Duckworth*, J.) MAUNG PO ZU *v.* MAUNG PO KWA. **65 I.C. 322=11 L.B.R. 89.**

Criminal Trial.

———**S. 102**—*Criminal trial—Proof of guilt*—Onus *on prosecution.*

In criminal cases the *onus* of proving beyond reasonable doubt the guilt of the accused is on the prosecution. (*Sanderson*, C.J. *and Walmsley*, J.) HATHEM MANDAL *v.* EMPEROR.
24 C.W.N. 619=56 I.C. 849=21 Cr. L.J. 543=31 C.L.J. 310.

——**S. 101**—*Criminal trial.*

Where the accused gave the deceased a beating the previous day and were seen by various persons on the occasion, it was highly improbable that they would murder the person next day, so to invite suspicion. (*Scott-Smith and Motisagar*, JJ.) SHEO RAM *v.* EMPEROR.
25 Cr. L.J. 45=1923 Lah. 436.

———**S. 101** — *Criminal trial — False information—Burden of proof—Belief in truth of information.*

On a prosecution for an offence under S. 182, I.P.C., the mere fact that the information was shown to be false does not throw the burden of proof on the accused that when he gave the information he believed it to be true. It is incumbent on the prosecution to show that the

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only reasonable inference was that he must have known or believed it to be false. (*Simpson*, A.J.C.) GAYA BARHAI *v* EMPEROR.
9 O.L.J. 342=4 U.P.L.R. O.C.) 81=23 Cr. L.J. 641=1923 Oudh 4

Covenant for renewal.

———**S. 103**—*Covenant for renewal—Lease for a fixed term.*

The *onus* of proving a right to renewal of a lease for a fixed term is on the lessee. (*Lord Atkinson*). SECRETARY OF STATE *v.* BAI RAJ BAI. **39 Bom. 625=42 I.A. 229=19 C.W.N. 1087=13 A.L.J. 953=(1915) M.W.N 563=29 M.L.J. 242=18 M.L.T. 179=2 L.W. 731=17 Bom. L.R. 730=30 I.C. 803=23 C.L.J. 1 (P.C.)**

Custom.

———**S. 103**—*Custom—Special custom at variance with personal law.*

In the case of Hindu convert to Mahomedanism the presumption is that they follow the Mahomedan Law and if it is pleaded that notwithstanding the conversion there has been an election to abide by the old law, the onus is on those setting up the plea to substantiate by clear and unambiguous evidence. (*Sir Lawrence Jenkins*). MAHOMED IBRAHIM ROWTHER *v.* SHAIK IBRAHIM ROWTHER. **45 Mad. 808=30 M.L.T (P.C) 85=15 L.W. 354=43 M.L.J. 69=(1922) M.W.N. 470=36 C.L.J. 64=24 Bom. L.R. 944=L.R. 3 P.C. 149=26 C.W.N. 793=49 I.A. 119 (P.C.)=1922 P.C. 59.**

———**S. 101**—*Custom—Custom in derogation of Hindu Law and agricultural custom.*

A custom opposed to both Hindu Law and the agricultural custom must be strictly proved and the onus on him, who alleges its existence. (*Abdul Raoof and Campbell*, JJ.) RAM NARAIN *v.* MT. HAR NARINJAN KUAR.
4 Lah. 297=1924 L. 116.

———**Ss. 101 and 103** - *Custom at variance with general law—Who to prove.*

The party who sets up a custom different from a general custom takes the burden upon him to prove it. (*Broadway and Abdul Raoof*, JJ.) NANDOO SINGH *v.* BALJIT SINGH.
1924 L. 93.

———**S. 102**—*Custom—Mahomedan Law—Sucession.*

In matters of succession the Mahomedan Qureshis are governed by their personal law and not by the general custom of the Punjab Agriculturists though they claim so. (*Campbell and Abdul Raoof*, JJ.) NUR HASAN *v.* GHULAM ZOHRA. **3 Lah. 274=1922 L. 222.**

———**S. 103**—*Custom—Succession.*

The burden of proving a customary succession of collaterals of 9th degree to the exclusion of daughters lies on the person setting up such

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a plea. Entries in *Riwaj-i-am* are not sufficient to shift the onus. (*Scott-Smith and Quadir*, JJ.) MANOHAR *v.* NANHI. **2 Lah 366.**

——S. 102—*Custom—Onus when shifted on to the opposite party.*

The onus of proof that lies on the person asserting that he is ruled in regard to a particular matter by custom, is shifted on to the opposite party in cases where the person alleging the custom happens to be a member of a tribe to which the ordinary agricultural custom is generally applicable. (*Shadi Lal and Rossignol*, JJ.) TAJ MUHAMMAD *v.* SYAD MUHAMMAD. **94 P.W.R. 1916 = 122 P.R. 1916 = 34 I.C. 126 = 48 P.L.R. 1917.**

——S. 102—*Custom—Succession.*

The burden of proving title under the rule of succession of the tribe lies on the person asserting it. (*Shah Din*, J.) IDA *v.* RAHIM BAKSH. **58 P.R. 1911 = 45 P.L.R. 1912 = 12 I.C. 857 = 202 P.W.R. 1911.**

——S. 103—*Custom—Exemption.*

The burden of proving that a general custom is not recognized in a particular locality lies upon the person alleging the same. (*Mittra*, A.J.C.) SITARAM *v.* MAROTI. **57 I.C. 331.**

——S. 103—*Custom—Special custom.*

The burden of proof lies on the person setting up a special custom, which is opposed to the general principles of any law. (*Hayward*, A.J.C.) MAKHI GAZI *v.* MASTAN SHAH. **36 I.C. 951 = 10 S.L.R. 126.**

Damages.

——S. 101—*Damages.*

Where performance accepted after time fixed the acceptance by the plaintiff of a waggon of coal at the time other than that agreed upon prevents him from claiming compensation for any loss occasioned by such failure unless he shows that at the time of such acceptance he gave notice of his intention to claim compensation the burden of proving which was on him. (*Knox*, J.) SAHU MAHADEO PRASHAD *v.* KANHAI LAL. **14 I.C. 129.**

——Ss. 102 and 103—*Damages—Contract.*

In a suit for damages for breach of contract, plaintiff must establish both the contract and its breach. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) LAKURKA COAL CO., LTD. *v.* JUMNADASS. **33 I.C. 838.**

——S. 103—*Damages—Contract—Breach.*

Where there is a *prima facie* breach of controt, the party guilty of the breach has to prove that the breach is excusable under any of the exception clauses of the agreement which he relies on. (1913) A.C. 680 at 699 *a*. (*Mookerjee and Beachcroft*, JJ.) KALI KANTA SHAH *v.* ISMAIL. **20 C.L.J. 133 = 27 I.C. 7 = 20 C.W.N. 159.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Discharge.

——S. 101—*Damages—Negligence by railway—Loss of goods.*

In a suit by consignor for damages for non-delivery of goods the Railway Company must prove actual loss of goods to come within the exception clause. The burden of proving due diligence lies primarily on the railway and it is only then that the consignor will have to prove the existence of exceptional circumstances excepted in the risk note. (*Dhobley*, A. J. C,) DHANDBHAI *v.* G.I.P. RY. COY. **5 N.L.J. 233.**

Date of birth.

——S. 103—*Date of birth.*

The burden of proving that a person was born on a particular date is on the person who alleges it. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA. **3 L.W. 210 = 33 I.C. 969 = (1916) 1 M.W.N. 208.**

Declaration.

——S. 102—*Declaration.*

The onus is on the defendant to plead and prove the adverse possession for the statutory period in a suit for declaration of title based on the defendant's alleged repudiation of it. 39 M. 617, Fol. (*Walsh*, J.) MUHAMED KANAIL *v.* HABIBULLAH. **37 I.C. 794.**

——S. 102—*Declaration—Possesssion—Title.*

Where plaintiff being in possession of property sued for a declaration of title and confirmation of possession, the defendant disturbing the possession must prove a better title in him. *Beachcroft*, J.) MUHAMMAD HASAW *v.* ABDUL HAMID. **50 I.C. 431.**

——S 102—*Declaration—Title—Proof of.*

In a suit for declaration of right to immoveable property the onus is on plaintiff to make out his title to the property. (*Fletcher and Richardson*, JJ.) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. **23 I.C. 852.**

——Ss. 101 and 103—*Declaration—Burden of proof—Right to property.*

Where a person transferred certain occupancy right in unalienated land in Berar putting the transferee in possession, and the transferee sued transferor for a declaration that he should be the registered occupant and the transferor denied the sale and alleged that the occupancy rights only were leased for a term of years, *held*, that the burden of proving that the transfer was a sale and not a lease lay on the transferee. *Batten*, A.J.C.) KASHIBAI *v.* LADURAM. **17 I.C. 889 = 8 N.L.R. 185.**

Discharge.

——Ss. 102 and 114—*Discharge—Shifting of onus—Trial Judge's estimate of testimony, Value of, in doubtful cases.*

In a suit to enforce a mortgage bond the defence was that the debt had been discharged

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Discharge.

by payments endorsed on the bond. The trial court, on review of the evidence held that the endorsements were fictitious and decided in favour of the plaintiff. But the High Court on appeal dismissed the suit. *Held*, that though the initial burden of proof rests on the appellants in such a case as this, both on general grounds and by reason of S. 114 of the Evidence Act, this burden shifts easily as the evidence is developed and much importance could not be attached in this case to the question on whom the initial onus lay. The evidence in this litigation, taken as a whole was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses and the balance of probabilities was also on the side of the conclusion reached by the trial Judge. (*Viscount Haldane.*) KUNDAN LAL *v.* MUSSAMMAT BEGAM-UN-NISSA.
22 C.W.N. 937=47 I.C. 337= 8 L.W. 233 (P.C.).

——**Ss. 103 and 114**—*Discharge on lost bond—Suit on—Discharge—Onus on defendant.*

Where in a suit on a lost bond the defendant admitted execution but pleaded payment, *held*, the burden of proving payment was on the defendant. (P.C. *Banerjee and Rafique*, JJ.) JHANDU MAL *v.* KARAN SINGH.
37 All. 426=29 I.C. 606=13 A.L.J. 567.

——**Ss. 102 and 103**—*Discharge—Mortgage—Onus.*

In a suit by a mortgagee for recovery of the mortgage-money, the onus of proving a discharge is on the mortgagor. (*Woodroffe and Newbould*, JJ.) INDRA NARAIN SARKAR *v.* BEDESWARI DASSYA. **30 I.C. 32.**

——**S. 102**—*Discharge—Partial discharge —Promissory note.*

A person pleading partial discharge of the amount due under a promissory note must prove the same. (*Abdur Rahim and Ayling*, JJ.) VENNAM PICHAYYA. *v.* GOGINENNI RAMAKRISHNA. **10 I.C. 674=9 M.L.T. 314.**

——**S. 103**—*Discharge—Onus on debt.*

Where the defendant admits the execution of the lost bond but pleads payment, the burden lies on him to prove payment. (*Kanihaya Lal*, A.J.C.) JAGANATH *v.* KAMTA SINGH.
32 I.C. 349=2 O.L.J. 498.

——**S. 103**—*Discharge— Payment towards particular debt.*

A person alleging a payment towards a particular debt is bound to prove first the fact of payment and second that it was towards that particular debt. (*Ormond*, J.) MAUNG PE *v.* MAUNG TUN THA. **11 I.C. 811= 4 Bur. L.T. 172.**

Dismissal from office.

——**S. 102**—*Dismissal from office—Enquiry into conduct of hereditary temple servants.*

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Ejectment.

Where trustees of a temple inflict punishment on its hereditary officers, the onus of proving that notice of the enquiry held by the trustees was given to the persons concerned, and that the procedure was legal, is on the trustee holding the enquiry. (*Oldfield and Sadasiva Aiyar*, JJ.) RANGASWAMI BHATTER *v.* SESHADHRI AIYANGAR. **38 I.C. 204. 4 L.W. 611.**

Ejectment.

——**S. 102**—*Ejectment—Possession—Limitation.*

Where some plots are recorded since long as belonging to the defendant, the onus is on the plaintiff to prove possession within limitation. (*Richards*, C.J. *and Rafique*, J.) SHEOPUJAN *v.* SOHABAI. **36 I.C. 427=14 A.L.J. 1066.**

——**S. 108**—*Ejectment—Nature of tenancy.*

Where in a suit by a person as owner of land to eject the defendant, the latter sets up the existence of a tenancy entitling him to retain possession, the burden is upon him to prove the nature of his tenancy and of his rights to remain in possession. (*Newbould and Panton*, JJ.) PROBODH CHANDRA DAS *v.* BIRSINHA BAGANI. **71 I.C. 319.**

——**S. 102**—*Ejectment—Tenancy not transferable except by custom—Onus.*

In a suit for ejectment of the transferee from the tenant of a tenancy not transferable except by custom the onus is on the transferee defendant to prove the right to transfer. (*Chatterjee and Mullick*, JJ.) ANANDA MOHAN SAHA *v.* GOBIN CHANDRA RAY. **33 I.C. 565= 20 C.W.N. 322.**

——**S. 103**—*Ejectment—Title—Burden of proof.*

The burden of proof in a suit for possession by the owner against a person in possession where the latter denies his title, rests with the plaintiff. But where his title to possession is admitted or proved the burden shifts on to the defendant to prove tenancy entitling him to possession. (*Rampini and Caspersz*, JJ.) MOSERAT HUSSAIN KHAN *v.* BEHARY LAL.
11 I.C. 901=14 C.L.J. 175.

——**S. 103**—*Ejectment—Title—Strict proof.*

Where a plaintiff wished to claim property under a relationship to the last male owner which relationship was disputed by the defendant a near relation of last male owner, it was held, that the onus lies on the plaintiff to prove the relationship. (*Scott-Smith and Shadi Lal*, JJ.) HARDEO RAM *v.* PARABATI. **31 I.C. 600=184 P.W.R. 1915.**

——**S. 103**—*Ejectment—Title—Proof of.*

A plaintiff must prove his own title before ousting a trespasser though the latter has no title. (*Chevis*, J.) PREM SINGH *v.* MOKAND SINGH. **30 P.W.R. 1912=13 I.C. 62. 22 P.L.R. 1912.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Ejectment.

——S. 101—*Ejectment—Landlord and tenant—Onus on landlord of proving a right to eject.*

Where a question of ejectment is between landlord and tenant, the onus is on the landlord of proving a right to eject. (*Phillips and Devadoss*, JJ.) SRI RAJA VENKATARANGAPPA APPARAO BAHADUR *v.* MORAMPUDI BAJIRAJU. **45 M.L J. 238=1921 Mad. 93.**

——S. 102—*Ejectment—Proof of title—Plea of adverse possession.*

Where a plaintiff, who does not allege dispossession sues for possession of immoveable property based upon title and the plea of adverse possession is raised by the defendant, the onus of proving his own title rests upon the plaintiff before the defendant can be called upon to prove adverse possession. (*Twomey*, J.) AUNG HLA *v.* TON GYI. **8 L B.R. 264= 35 I C. 432=9 Bur. L T. 242.**

——Ss. 102 and 103—*Ejectment—Title, suit based on—Plea of benami—Onus.*

A plea of benami raised by the defendants does not relieve the plaintiff of the necessity of proving the title on which he sues. (*Pratt*, J.C. *and Crouch*, A.J.C.) NUR MAHOMED *v.* KESSUMAL. **20 I.C. 528=7 S.L.R. 11.**

Exception to rule.

——S. 103—*Exception to rule—Disqualification to succeed as heir.*

Leprosy to be a ground of exclusion must be of the sanious or ulcerous and not of the unaesthetic type. The presumption of Hindu Law is against disqualification and the burden of proof of disqualifications lies on a person who seeks to exclude another who would be an heir, should no case of exclusion be established. Where it is contended that a person is excluded from inheritance by reason of disease, the strictest proof of the disease as will disqualify him, at the time the succession opened, will be required. (*C.C. Ghose and Panton*, JJ.) SURENDRA NATH DE *v.* ASHUTOSH NANDI. **50 Cal. 604=27 C.W.N. 953=1923 Cal. 331.**

——S. 103—*Exception to rule—Agriculturist—Exemption from attachment—C P.C., S. 60 (c).*

The judgment-debtor has to set up and prove that he is an agriculturist within the meaning of S. 60 (c), C.P.C. (*Fletcher and Walmsley*, JJ.) ASHMATULLAH SIRCAR *v.* PAN MAHAMUD CHOWDHURY. **33 I.C 343= 20 C.W.N. 874.**

——S. 103—*Exception to rule.*

A person pleading a certain exception to a rule is bound to bring himself within it. 15 C. 555 at 557, Ref. (*Carnduff and Chatterjee*, JJ.) HARI MONI DEBI *v.* MOTI SHEIKH. **16 I C. 30=16 C.W.N. 779.**

——S. 103—*Exception to rule.*

A commission agent often enters into transactions on his own account and the onus lies on him to prove that in a particular transaction he acted as an agent and not a principal. (*Martineau*, J.) FIRM OF SHIB LAL RAM LAL *v.* FIRM OF HARI RAM CHHADAMILAL. **1922 Lah. 408.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Execution of Document.

——S. 103—*Exception to rule—Succession.*

Correctness of entries in *Riwaj-i-am* is presumed in favour of daughter-in-law and the rebuttal of the presumption is on the son who wants to exclude her. (*Broadway and Martineau*, JJ.) JAGIR SINGH *v.* MST. SANTI. **3 L. 181=1922 Lah 389.**

Execution of Decree.

——S. 101—*Execution of decree—Onus of proof.*

It is for the decree-holder to clearly establish that the property belongs to his judgment-debtor only and is liable to be sold in execution of the decree. (*Broadway and Moti Sagar*, JJ.) ISHAR DAS *v* FAZAL ILAHI. **1923 Lah 522.**

——S. 103—*Execution of decree.*

The burden of proving that a decree cannot be executed lies on the person alleging it. (*Shahdin and Scott-Smith*, JJ.) FATEH CHAND *v.* MUSSAMAT MENGHI BAI. **103 P. W.R. 1913=181 P.L.R. 1913= 19 I C. 481=103 P.R. 1913.**

——S. 101—*Execution of decree—Proof of fraudulent transfer.*

Where a claim is rejected in execution proceedings and the claimant sues to establish his title the burden of proof upon him is discharged as soon as he establishes that the transfer under which he claims is for good consideration. Then the onus is shifted on to defts. to establish fraudulent intention. (*Coutts and Macpherson*, JJ.) MUSAMMAT BIBI SAIRA *v.* BIBI SALIMAN. **63 I.C 111= 2 P L T. 577.**

Execution of Document.

——S. 103—*Execution of document—Admission of signature—Effect of.*

An admission by the defendant regarding the putting of a signature or a thumb-mark on a document does not amount to an admission of execution so as to shift the burden of proof on the defendant. This is specially so where the defendant pleads that when he signed the document it was blank. (*Rafique and Lindsay*, JJ.) PIRBHU DAYAL *v.* TULA RAM. **20 A.L.J. 672=L R. 3 A 363= 1922 All. 401 (2).**

——S. 102—*Execution of document—Suit for cancellation.*

In a suit to have a bond cancelled as a forgery the onus is on the defendant to prove execution of the bond, as it is he who substantially asserts the affirmative of the issue. The

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value of the general presumption against misconduct is small where alleged misconduct is the very foundation of the suit. (*Drake-Brockman*, J.C.) MAHADEO *v.* VITHOBA.
18 I.C. 863=9 N.L.R 8.

Fraud.

——— Ss. 101 to 103—*Fraud—Misrepresentation—Burden of proof.*

Held, that the burden is on the deft. who obtained the deed by misrepresentation that the plff. acquired full information of the true state of facts at a time too remote to allow him to maintain the suit. (*Mookerjee and Panton*, JJ.) NIBARAN *v.* NIRUPAMA.
34 C.L J. 563=69 I.C. 476=26 C.W.N 570.

———S. 102—*Fraud—Onus.*

In a suit on a bond where there is no dispute as to consideration, the *onus* is on the defendant to prove his plea of fraud. (*Chevis*, J.) NEKI RAM *v.* KHUSHI RAM. **39 P.L.R. 1919= 51 I.C. 579=14 P.W.R. 1919.**

———S. 102—*Fraud—Illegality — Compromise—Impeaching validity of.*

Onus probandi lies on the party which impeaches the compromise to prove that it was illegal or void. (*Ayling and Seshagiri Aiyar*, JJ.) KARAKATTITATHI RAYARAPPA *v.* KOYOTAN CHABLE VEETIL. **35 M.L J. 51= 24 M L T. 23=45 I.C. 439=8 L W. 154.**

———S. 102—*Fraud on registration law.*

Where a party attacks the validity of a registered document on the ground it was not registerable in the place where it was done and proves that there was no such plot as the one in the registration area or that it did not belong to the party, then the onus is on the other party to show there was no fraud on the registration law. (*Daniels*, J.C.) MT. SURJA *v.* BIJAI BAHADUR SINGH. **26 O.C. 336= 73 I.C. 13=9 O. & A.L.R. 107.**

———S. 101—*Fraud—Apparent appearance is presumed to be true.*

Where a transaction is openly carried out and is given effect to, the party alleging that the motive was to perpetuate fraud must prove it. (*Daniels and Dalal*, A. J. Cs.) HAFIZ-UNNISSA *v.* JAWAHIR SINGH. **66 I.C. 24= 24 O.C. 374.**

——— S. 103—*Fraud—Removal of—Effect of—Onus on person guilty of fraud.*

The party guilty of fraud must show that the continuing effects of the fraud have been removed. (*Ross*, J.) MAHABIR RAM *v.* RAM BAHADUR DUBAY. **4 P.L.T. 305= 1923 P. 435.**

———S. 103—*Fraud—Undue influence—Onus.*

Execution of a document being admitted, the burden of proving that it was executed under fraud or undue influence is on the party pleading it. (*Chapman and Jwala Prasad*, JJ.) RAGHUGIR *v.* RAGHUNATH GIR. **2 P.L.W. 23=41 I.C. 202=2 P.L.J. 398.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Grant.

Genuineness.

———Ss. 102 and 103—*Genuineness—Deed—Execution—Compulsorily registered.*

In a suit on a document the *onus* lies on plaintiff to prove its genuineness, where the executant denies execution though the mortgage was compulsorily registered. 15 M. 138, Expl. The Registrar's belief in a registration enquiry is of no avail in a civil case. (*Spencer and Krishnan*, JJ.) PALLI KAND KATHAPURATH MAMMAD *v.* MANTANCHERI MAMMAD. **(1917) M.W.N. 789=43 I.C. 28= 35 M.L J. 315.**

———S. 103—*Genuineness—Consideration—Execution of document by illiterate woman—Admission of execution of another document.*

Where an illiterate woman alleged to have put her mark and thumb-impression on a document for Rs. 3,000 denies to have executed such a document but admits having executed another for Rs. 400 only, the creditor must prove both the genuineness of the deed and the passing of consideration. (*Parleit*, J.) MAUNG BYA *v.* MAUNG PO. **11 I.C. 916= 4 Bur. L T. 202.**

Gift.

———Ss. 102 and 103—*Gift—Onus of proof—Capacity of executant.*

The burden of proving that a deed of voluntary gift executed by an old and infirm woman was executed with full knowledge of its contents and that she did so long willingly and without any pressure or solicitations which might amount to the exercise of undue influence, lies heavily on the donee. (1881) 18 Ch. 668, Rel. Any person of full age and sound mind, who has executed a voluntary deed of gift by which he has deputed himself comes to have the deed set aside, especially a long time afterwards, he must prove some substantial reason why the deed should be set aside. (*Davar*, J.) RAJARAM *v.* KHANDU BALU. **15 I.C. 523=14 Bom. L.R. 340.**

——— S. 103—*Gift.*

The onus of proving an oral gift lies on the person setting up the plea. The oral income must be satisfactory. (*Das and Adami*, JJ.) RAMESHWAR NARAIN *v.* RIKNATH KOERI. **1923 P. 165.**

Grant.

———S. 103—*Grant—Service tenure—Resumption—Zemindar.*

Where the Government claim that lands in a Zemindari are chaukidari chakran lands and therefore irresumable by Zemindar the *onus* is on the Government. (*Lord Parker.*) RAMACHANDRA BHANJI DEO *v.* SECRETARY OF STATE. **43 Cal. 1104=43 I A. 172= 20 M.L.T. 235=21 C.W.N 1245= (1916) 2 M.W N. 175=4 L W 251= 14 A.L.J. 1009=18 Bom. L R. 838= 24 C.L.J 296=37 I.C. 223= 31 M.L.J. 745 (P.C.).**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Grant.

——S. 102—*Grant—Resumption—Burden of proof.*

The burden of proof that land is resumable on account of discontinuance of service lies on him seeking to resume. (*Batchelor*, A.C.J. *and Shah*, J.) BASLINGAPPA *v.* CHANDRAPPAN. **35 I.C. 860=18 Bom. L.R. 695.**

——S. 101—*Grant—Authority to give—Donee must show grantor had authority—Shifting of burden in case of long acquiescence.*

In case of authority to give grant donee must show grantor had authority. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SRISH CHANDRA GHOSH MANDAL. **27 C.W.N. 964=1924 Cal. 236.**

Holder in due Course.

——S. 103—*Holder in due course—Burden of proof.*

One who holds a bill of exchange which is proved to have been obtained originally for unlawful consideration must prove that he is a holder in due course and therefore in a better position than his transferor. (*Beaman*, J.) DAULAT RAM *v.* NAGINDAS. **19 I.C. 789= 15 Bom. L.R. 333.**

Insanity.

——S. 103—*Insanity—Onus of proof.*

The burden of proving that a person was of unsound mind at, and from, a particular date when a document was executed by him and which is sought to be avoided is on the person alleging the lunacy. (*Jenkins*, C.J. *and N. R. Chatterjee*, J.). KASSIM MAMOOJI *v.* K.B. DUTT. **27 I.C. 459=19 C.W.N. 45.**

——S. 102—*Insanity—Proof of.*

Where a person is found to be a lunatic (under Act XXXV of 1858) those who assert at any later date, that he is of same mind, must prove that he is so. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. **3 L.W. 290= 33 I.C. 578=19 M.L.T. 243.**

——S. 102—*Insanity—Proof.*

A suit was brought on an equitable mortgage against A, B and C but a decree was passed only against A and C, omitting B as being insane. The purchaser in execution of the decree, was subsequently sued on the basis of a mortgage executed by B prior to the suit and the property really belonged to B. The onus of proof shifted from plaintiff to the defendant when he showed the existence of the previous mortgage under which possession was claimed. B was not bound by the decree as he was not a party to it. (*Mccoll*, A.J.C.) NGA LUGYI *v.* PALNIAPPA. **4 Bur. L.T. 242=12 I.C. 199.**

Jurisdiction.

——S. 102—*Jurisdiction—Civil Court—Onus on person seeking to oust.*

The *onus* is on the defendants to satisfy the Court that a claim made by the plaintiffs is not within the cognizance of a Civil Court. (*Shadi Lal*, C.J. *and Harrison*, J.) RAMJI LAL *v.* MANGAL SINGH. **2 Lah. 302= 28 P.L.R. 1922=1922 Lah. 157.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Legal Necessity.

Land Acquisition.

——S. 103—*Land acquisition—Claimants to compensation—Revenue auction-purchaser and lakhiraj holder.*

Where a question of title to a plot of land arose between claimants to compensation paid by Government after its acquisition under the Land Acquisition Act, one being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as lakhiraj: *Held*, that the former was in the position of the plaintiff and the burden of proof as stated above was on him. 14 M.I.A. 152, Rel. A Land Acquisition Court can determine a conflict of title between rival claimants. (*Chatterjee and Roe*, JJ.) SM. KRISHNA KALIYANA DASI *v.* BRAUNFIELD. **36 I.C. 184=20 C.W.N. 1028.**

Legal Necessity.

——S. 102—*Legal necessity — Religious endowment—Mortgage.*

On a mortgage of endowed property the onus of proof of necessity is on the mortgagee. (*Lord Shaw.*) MURUGESAM PILLAI *v.* GNANA SAMBANDA PANDARA SANNADHI. **40 Mad. 402=21 M.L.T. 288= 32 M.L.J. 369=15 A.L.J. 281= 1 P.L.W. 437=5 L.W. 739= 21 C.W.N. 761=19 Bom. L.R. 456= 25 C.L.J. 589=(1917) M.W.N. 487= 39 I.C. 659=44 I.A. 98. (P.C.)**

——S. 102—*Legal necessity—Hindu Law —Alienation.*

The burden of proving necessity for an alienation by a Hindu widow is on the alienee. (*Mr. Amir Ali.*) HARI KISHEN BHAGAT *v.* KASHI PARSHAD SINGH. **42 Cal. 876= 42 I.A. 64=17 M.L.T. 115= 19 C.W.N. 370=13 A.L.J. 223= 2 L.W. 219=21 C.L.J. 225= 28 M.L.J. 565=17 Bom. L.R. 426= 27 I.C. 674=(1915) M.W.N. 511 (P.C.).**

——S. 101—*Legal necessity — Alienation by Hindu father—Sale pre-empted—Suit by sons challenging alienation.*

Where legal necessity for a major portion is proved, the sale should be upheld. Where a sale for cash is impeached by sons, the burden of proving necessity is on the creditor or transferee. (*Daniels*, J.) CHNDRIKA SINGH *v.* BHAGWAT SINGH. **L.R. 4 All. 545= 1924 A 170**

——S. 103—*Legal necessity—Hindu joint family—Alienation by manager—Suit by junior members impeaching sale—Onus of proving necessity on purchaser.*

Where a sale of joint family property by the manager of the family is questioned by junior

EVIDENCE ACT (I of 1372), Ss 101, 102, 103 —Legal necessity.

members in a suit the burden of proving that the alienation was valid is upon the purchaser. (*Rafique and Stuart, JJ.*) RAMSARUP SINGH v. RAM SARAN SINGH. 20 A.L.J. 935= 1922 A. 539.

——Ss. 102, 103—*Legal necessit*

In the case of an alienation by a Hindu widow it is the alienee who has to show necessity. (*Macleod*, C.J., *Shah*, J.) MOHANSING UMADRAMAH *v.* DALPATSING HANBAJI. 24 Bom. L.R. 289=46 B. 703= 1922 B 51.

——S. 101—*Legal necessity.*

Proof of necessity for alienation by manager lies upon the alienee. (*Scott-Smith and Fforde, JJ.*) RODHA RAM *v.* AMAR CHAND. 4 Lah. 208=1924 L. 141.

——S. 101—*Legal necessity—Joint family —Decree obtained on father's debt—Binding nature of.*

The burden of proving that a debt is non-existent or illegal is upon the son. He must prove that he is not liable to discharge the pious obligations. (*Abdul Raoof and Moti Sagar, JJ.*) RAM RATAN *v.* BASANT RAI. 64 I.C. 121=2 Lah. 263.

——S. 101—*Legal necessity—Minor.*

In the case of sale by guardian with sanction of Court onus is on minor to prove want of necessity or that the sale is improper. (*Spencer and Ramesam, JJ.*) NALLKA VENKATASWAMI *v.* RUGAM VIRAMMA. 15 L.W. 373=45 M. 429=42 M.L.J. 333= 31 M.L.T. 481=(1922) M.W.N. 357= 1922 M. 135.

——Ss. 102 and 103—*Legal necessity.*

Where an alienation by a Hindu widow in accordance with a compromise is challenged by a reversioner, the alienee has to prove that the compromise is binding on the reversioner. (*Schwabe*, C.J., *Coutts Trotter and Kumaraswami Sastri, JJ*). NALLA TIRUPATI RAJU *v.* NANDIKOLLA VENKAYYA. 45 M. 804= 15 L.W. 395=(1922) M.W.N. 207= 30 M.L.T. 181=42 M.L.J. 392=1922 M. 131.

——Ss. 102, 103—*Legal necessity—Joint family.*

The onus is on the plaintiff that the debt was contracted under circumstances which would bind the other members of a family. (*Sundara Aiyar, J.*) *In re* SRINIVASA AIYANGAR. 14 I.C. 681=(1912) M.W.N. 495.

——S. 102—*Legal necessity—Minor—Joint family.*

If a plaintiff seeks to impose on a minor in a joint family any liability as a member of a family partnership he must show how the minor's liability arises, 27 B. 157, Foll. (*Drake Brockman, J.C. and Findlay, A.J.C.*) PADAMARAJ *v.* GOPIKISON. 56 I.C. 129.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Majority.

Legitimacy.

——Ss. 102 and 103—*Legitimacy—Mahomedan Law.*

The person who alleges that abnormal circumstances existed at his birth must prove them. Mohammadan Law does not presume legitimacy of a child born to his mother 14 months after the death of her husband. He must prove that the period of gestation in his case was extraordinarily prolonged. (*Shadi Lal, C.J. and Abdul Qadir, J.*) UMAR HAYAT *v.* MISRI KHAN. 69 I.C. 491.

——S. 101—*Legitimacy—Connection between man and woman.*

Where a connection between man and woman is permanent, it is presumed to be not adulterous, and the burden of proving, that the connection is adulterous and involves criminal offence, lies on him who raises the contention. (*Sadasiva Aiyar and Napier, JJ.*) PALANI AMMAL *v.* KUPPUSWAMI GOUNDAN. 62 I.C. 769=13 L.W. 511.

——S. 102—*Legitimacy—Presumption as to lawful connection and legitimacy—Rebuttal.*

Where there are circumstances justifying the inference of marriage and legitimacy, the burden is upon those who deny the status of the wife and the son, to produce conclusive evidence to rebut the presumption of lawful connection and legitimacy. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) SURIA QADIR *v.* QADSIA BEGAM. 24 I.C. 648=1 O.L.J. 281.

Limitation.

——S. 103—*Limitation.*

When a plaint is *prima facie*, barred the plaintiff who tries to bring it within limitation by proving an acknowledgment under S. 19, which gives him a fresh period, must give a cogent proof of his allegations. (*Rafique and Lindsay, JJ.*) COLLECTOR OF JAUNPUR *v.* JAMNA PRASAD. 20 A.L.J. 140= 44 I.A. 360=1922 A. 37.

——S. 102—*Limitation—Onus.*

In a suit for redemption the onus of proving that the suit is within limitation lies on the plaintiff. (*Perman, J.*) KHANDU LAL *v.* FAZUL. 31 I.C. 956=1 Lah. 21.

——S. 103—*Limitation.*

(Per *Seshagiri Aiyar, J.*)—The burden of proving that a suit is in time is on the plaintiff. (*Wallis, C.J. and Seshagiri Aiyar, J.*) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) 1 M.W.N. 208=33 I.C. 969= 3 L.W. 210.

Majority.

——S. 103—*Majority—Decree against person as minor—Suit to set aside on ground of no minority.*

When a decree passed against a minor is sought to be set aside on the ground that he was not a minor, the burden of proving that

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Malicious Prosecution.

be was a major lies on the person making the allegation. (*Mitra, Offg.*, A.J.C.) GOKUL SINGH *v.* KANHAIYA LAL. **26 I C. 816 = 10 N L R. 137.**

Mallcious Prosecution.

——S. 103—*Malicious prosecution—Innocence—Burden of proof.*

In a suit for malicious prosecution, the plaintiff has to prove his innocence with a view to establish that the prosecution was commenced maliciously and without reasonable and probable cause. (*Mookerjee and Beachcroft*, JJ.) MUCHI OSTA *v.* HORSMULL MARWARI. **19 I.C. 24 = 17 C W N. 434.**

——S. 103—*Malicious prosecution—Reasonable and probable cause.*

In a suit for damages for malicious search the *onus* of proving want of reasonable and probable cause lies on the plaintiff. (*Abdur Rahim, Offg.* C.J. *and Krishnan*, J.) GADGI MARRAPPA *v.* THE FIRM OF VANNAJEE VAJANJEE, **20 M L T. 303 = (1916) 2 M.W.N. 280 = 38 I.C 823 = 31 M.L J. 712.**

Marriage.

——S. 102—*Marriage—Maintenance.*

In maintenance proceedings under the Code the *onus* is on the wife to show that she is the wife of the accused. (*Saunders*, J.C.) WAFOON *v.* MA THEIN TIN. **24 I.C. 572 = 15 Cr. L J. 484 = 7 Bur. L.T. 71.**

Material Alteration.

——S 103—*Material alteration*—Onus.

In a suit on a mortgage-bond, the burden of proof lies on the defendant to show how that particular clause was an alteration made subsequent to the execution of the bond without the knowledge of the executant. (*Mookerjee and Beachcroft*, JJ.) ACHYUTANUNDA BHATTACHARYA *v.* RAM NATH BHATTACHARYA. **21 I.C. 79 = 18 C.L.J. 354.**

Minority.

——S. 103—*Minority*—Onus.

The *onus* of proving the minority of the executant of a deed is on the person asserting it. (*Lord Dunedin.*) JAGANNATH PRASHAD SINGH *v* ABDULLAH **45 Cal. 909 = 45 I.A 97 = 16 A.L J. 576 = 5 P.L.W. 83 = (1918) M W N 406 = 22 C W.N. 891 = 8 L.W. 163 = 24 M.L.T. 62 = 28 C L J. 192 = 20 Bom. L R. 851 = 45 I.C. 770 = 35 M L.J. 46 (P.C.).**

——S. 103—*Minority — Contract—Admission of majority—Effect of.*

When the validity of a contract is questioned on the ground that the executant is a minor, it is for the plaintiff to establish by *prima facie* evidence that the contract was valid and entered into by a person who was competent to do so. An admission of majority at the time

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Minority

of the execution of the deed is sufficient *prima facie* evidence to establish the majority of the executant. 2 I. C. 839; 13 I. C. 556, Ref. (*Stuart*, J.) BACHCHA LAL *v.* HASAN KHAN. **4 U.P.L R. (A.) 81 = 1922 All. 240.**

——S. 101—*Minority—Pro note—Suit on.*

Where in a claim on pro-note, the debt, sets up the plea of minority, the *onus* is on him to prove the same. (*Le Rossignol*, J.) HARJI MAL *v.* ABDUL HALIM. **60 I C. 267.**

——Ss. 101, 102 and 103—*Minority—Hindu Law—Joint family—Alienation by adult members—Suit by minors.*

The *onus* of proving that an alienation made by the adult members of a Joint Hindu family, is not binding on the minors, for want of consideration, lies on those minors seeking to set it aside. (*Ayling and Seshagiri Aiyar*, JJ). KRISHNA *v.* MADHAWA. **63 I.C. 258.**

——S. 102—*Minority*—Onus *on person setting up.*

The party who comes to the Court and pleads minority must make out his case before the adverse party can be required to rebut it. (*Coutts Trotter and Srinivasa Aiyangar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBBARAYA GOUNDAN. **33 I.C. 142.**

——S. 102 and 103—*Minority*—Onus.

It is for the party setting up infancy in the case of a contract to prove it. 24 M.L.J. 517; 26 B. 109; 8 W.R. 371, Foll. (*Oldfield and Tyabji*, JJ.) JODI BIBI *v.* VIJIAR KHAN SAHEB. **26 I C. 407.**

——S. 102—*Minority.*

A person alleging that another was minor at a particular date must prove it. (*Hallifax*, A.J.C.) BALWANT SINGH *v.* NARAYANA. **58 I.C. 196.**

——S. 101—*Minority.*

The burden of proving minority lies on the person alleging it. (*Stuart and Kanhaiyalal*, A.J.Cs.) RAJA *v.* SANT RAIN DAS. **2 O L J 228 = 30 I C 193 = 18 O.C. 95.**

——Ss. 102 and 103—*Minority*—Onus *on person pleading.*

Where a person alleges his minority in order to escape liability under a mortgage executed by him the burden lies upon him to prove that he was a minor, at the time the transaction was entered into. (*Daniels and Lyle*, A.J.Cs.) NIAMATTULLAH KHAN *v* GAJ RAJA SINGH. **22 O.C. 162 = 1 U P.L R. (J.C) 83 = 53 I C 136 = 6 O L J 376.**

——Ss. 103 and 103—*Minority*—Onus *of proof.*

When in a suit upon a contract the defendant pleads minority at the time of the contract the *onus* of proving that he was of age is on the person who tries to enforce the contract. (*Lindsay*, J.C. *and Rafiqus*, J.) MUHAMMAD HUSAIN *v.* LALJI SINGH. **25 I.C. 648 = 1 O.L.J. 366.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Mistake.

Mistake.

———S. 103—*Mistake*—Onus *on person.*

The *onus* of proving that a property was included by mistake for another property, in a document is on the person setting up that plea. (*Lord Moulton.*) HARENDRA LAL ROY *v.* HARI DASI DEBI. **41 Cal. 972=1 L.W. 1050=41 I.A. 110=27 M.L.J. 80=(1914) M.W.N. 462=16 M.L.T. 6=18 C.W.N. 817=19 C.L.J. 484=16 Bom. L.R. 400=23 I.C. 637=12 A.L.J. 774 (P.C.).**

———Ss. 102 and 103—*Mistake—Recitals*—Onus *of proving incorrectness.*

The *onus* of proving that a document to which a person has affixed his signature does not contain a correct statement of the facts and of the intentions of the parties is on the person making the allegation. (*Roe and Jwala Prasad*, JJ.) MT. RAMDEI *v.* CHANDRABALI BIBI. **44 I.C. 398=4 P.L.W. 237.**

Mortgage.

———S. 101—*Mortgage—Execution admitted sham nature of.*

Where the execution of the mortgage document is admitted but it is pleaded it was false and merely a sham. The burden of proof lies on the party who sets it up. (*Lindsay and Kanhaiya Lal*, JJ). CHIDDU *v.* DESRAJ.
21 A.L.J. 793=L.R. 5 A. (Civ.) 53=1924 All. 294.

———S. 101—*Mortgage—Redemption.*

In a suit for redemption the burden of proving a mortgage is upon the mortgagor. (*Daniels* J.) RAMJI DAS *v.* MIHEIN LAL.
1923 All. 441.

———Ss. 102 and 103—*Mortgage—Redemption—Title to redeem*—Onus.

The plaintiff in a suit for redemption must show a subsisting title. (*Rafique and Piggott*, JJ.) FRANK HAY *v.* RAFIUDDIN.
25 I.C. 351=12 A.L.J. 769.

———S. 103—*Mortgage—Redemption suit*—Onus *of proof.*

In a redemption suit, the plaintiff must first prove the mortgage, and if he has given proof thereof, the burden shifts to the defendant to prove that the relationship has ended. (*Banerji and Ryves*, JJ.) GANESH LAL *v.* BASANLI LAL. **20 I.C. 29.**

———S. 103—*Mortgage—Ownership of properties included in*—Onus.

In a suit between the mortgagee and a third party the *onus* of proving that the properties comprised in the mortgage-deed belong to the mortgagor lies upon the mortgagee. (*Beaman and Hayward*, JJ.) ANANDI BAI BHASKAR NILKANTH *v.* NARAIN DHOND DEV TATTOO.
27 I.C. 478=17 Bom. L.R. 49.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Mortgage.

———Ss. 101, 102—*Mortgage.*

As soon as a mortgage-deed is produced which contained a representation as to the share of another person in the property mortgaged, the burden is no longer on the mortgagees to establish that they did not know the true position but it is shifted on the mortgagors to show the mortgagee's knowledge of the true facts. (*Greaves and Ghisa*, JJ.) SARODA PRASAD *v.* GOSTO BEHARI HAZRA. **27 C.W.N. 943=36 C.L.J. 78=1922 Cal. 542.**

———S. 103—*Mortgage—Redemption.*

The burden of proving that a mortgage is irredeemable is on the person who resists redemption. (*Krishnan and Ramesam*, JJ.) RYRU NAMBIAR *v.* KAPPALLI KANARA.
42 M.L.J. 350=(1923) M.W.N. 76=16 M.L.W. 930=1922 Mad. 185.

———Ss. 102 and 103—*Mortgage—Redemption*—Onus.

Where both plaintiff and defendant relied only on one mortgage and the only question is whether it is subsisting or not the burden of proof is on the defendant as he must be deemed to be aware of the date of the transaction, 26 A. 313; 1 A. 117; 38 All. 540, Foll. (*Seshagiri Aiyar and Napier*, JJ.) MADHAVANVYDIAR *v.* LAXSHMANA PATTAR.
(1918) M.W.N. 139=44 I.C. 447=7 L.W. 284.

———S. 102—*Mortgage—Usufructuary mortgage after simple mortgage of same property—Mortgagee setting up sale in his favour—No mutation of names.*

The burden of proof in a case where an usufructuary mortgagee coming in after a simple mortgage of the same property in a favour of another sets up a sale in his favour but has not obtained mutation of names is heavily on the person setting up a sale. (*Robinson*, J.) MAUNG SHWE MIN *v.* MAUNG SUN NYUN. **22 I.C. 803.**

———S. 102—*Mortgage—Conditional sale*—Onus.

Sale of property together with a subsequent agreement to repurchase within a specified time, may be regarded a kind of mortgage, but the burden of proving that the transaction does amount to a mortgage is on the party asserting. (12 A. 387, Ref. to.) (*Parlett*, J.) MAUNG KYA HNIN *v.* MAUNG KO KYAW.
35 I.C. 336=10 Bur. L.T. 4.

———Ss. 102 and 103—*Mortgage—Suit for redemption—Burden of proof.*

The burden of proof in a suit for redemption where the plaintiff is out of possession is cast heavily upon him, however weak the defence might be. (*Maung Kin*, J.) LA AUNG *v.* MAUNG SO. **31 I.C. 885=9 Bur. L.T. 87.**

———Ss. 102 and 103—*Mortgage—Redemption suit.*

In a suit for redemption, the onus is on the plaintiff to prove the initial mortgage. (*Twomey*, J.) MA SHWE HPE *v.* MAUNG SEIN.
20 I.C. 666=6 Bur. L.T. 181.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Negligence.

Negligence.

———S. 102—*Negligence.*

In the event of a derailment resulting in injury to passenger, the onus of disproving negligence lies on the railway. (*Lord Sumner*) EAST INDIA RY. COY., *v.* KIKWOOD.
48 Cal. 757=15 L.W. 248=1922 P.C. 195.

———S. 102—*Negligence—Loss in Railway transit—Burden of proof.*

When a *prima facie* case about the wilful negligence of the Railway servants is made out the onus lies on the company to offer a reasonable explanation. (*Macleod*, C.J. *and Shah*, J.) CENTRAL INDIA SPINNING & WEAVING COY. *v.* G.I.P. RY. **24 Bom.L.R. 272=1922 Bom. 46.**

———S. 101—*Negligence--Railway Company —Suit against—Loss of goods consigned under risk note—Plaintiff to prove how loss occurred.*

The plaintiff is to prove how loss occurred in a suit against Railway Company regarding loss of goods consigned under risk note. (*Oldfield and Devadoss* JJ.) NARAYANA AIYAR *v.* S. I. RY. CO. LTD. **18 L.W. 322= 1924 Mad. 388.**

Notice.

———S. 101—*Notice—Contract to sell — Specific performance —Subsequent purchaser without notice—Registration--Burden of proving notice of prior contract to sell.*

Registration by itself is no notice. There must be other circumstances in the case from which the Court could come to the conclusion that the subsequent purchaser had notice of the prior and registered agreement and the burden of proving lies on the person setting up notice. 36-B. 446, Dist. (*Macleod*, C.J. *and Crump*, J.) PEERKHA LALKA *v.* KASHILA MATI.
23 Bom. L.R. 375=1923 Bom. 40.

———S. 103 — *Notice — Registered and unregistered instrumedt—Priority.*

The burden of proving that a person claiming under a subsequent registered document has no priority over another claiming under a prior unregistered document by reason of the former having had notice of the latter's title, is on the party alleging such notice, 25 M. 1, Foll. (*Mookerjee and Beachcroft*, JJ.) MAGU BRAHMA *v.* BHOLI DASS. **19 C.L.J. 352= 20 I.C. 195=18 C.W.N. 657.**

———S. 102—*Notice.*

Burden of showing that a subsequent contract was *bona fide* and without notice of prior contract for sale is on the person claiming under the subsequent contract. (*Abdul Raoof and Harrison*, JJ.) KANSHI RAM *v.* ISHWAR DAS. **1923 Lah. 108.**

———S. 103—*Notice, want of— Contract to sell.*

In case of a suit for specific performance it is the transferee to prove that he was a *bona fide* transferee and had no notice of the contract in the plaintiff's favour. (*Abdul Raoof*, J.) BENDRABAN *v.* BODH RAJ.
69 I.C. 470.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Official Records.

———S. 102—*Notice — Plea of purchase without notice of prior agreement—Onus.*

The burden of proving a purchase without notice of a prior mortgage or contract is on the subsequent purchaser and the rule is the same for moveable as well as immoveable property. (*Heald and Lentaigne*, JJ). MAUNG CHITTU *v.* BANSI DHAR BAZAZ. **2 Bur. L.J. 63= 1923 Rang. 153.**

Novation.

———Ss. 101, 103—*Novation —Contract— Variation.*

Where parties to a written contract depart from it and adopt some other line of conduct, the party setting up the substituted verba contract must show not only what he understood to be the new terms but also that the other party had the same understanding. (*Mookerjee and Fletcher*, JJ.) DINA NATH *v.* ETHARAM. **64 I.C. 785=33 C.L.J 577.**

———S. 102—*Novation—Plaintiff alleging unconditional attacking cver of liability.*

Where A owed a debt to B and B alleged that A's brother C unconditionally took over the liability, but C replied that he only agreed to set off the amount against the price of the bricks which B might purchase from him. *Held*, that the burden of proving unconditional liability was on B. (*Twomey*, J.) MAUNG KAN PE *v.* MAUNG SAN KYI. **11 I.C. 774= 4 Bur. L.T. 156.**

Objection to Onus.

———S. 103—*Objection to onus—Waiver.*

Where burden of proof with respect to certain fact lies on the defendant, but the plaintiff without waiting for defendant's evidence takes upon himself to prove it, he cannot subsequently say that the defendant did not discharge his part. (*Karamat Hussain*, J.) SAJAN KUNWAR *v.* JOTI PRASAD. **10 I.C. 223.**

———S. 103—*Objection to onus—Question of law.*

The question upon which party the onus of proving any particular point lies, is undoubtedly a question of law. (*Scott Smith*, J.) MUSAMMAT NIAMAT BIBI *v.* MAHOMED FAIZ.
65 I.C. 745.

Official Records.

———S. 102—*Official records — Bombay Hereditary Officers Act, S.* 15.

Where a whole village is mentioned in a Sanad evidencing a settlement under S. 15, Bombay H. O. Act, 1874, the party alleging that a particular Survey Number of that village is outside the scope of the settlement

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Official Records.

must prove it. (*Shah and Hayward*, JJ.) AMRIT VAMAN *v.* HARI GOVIND.
44 Bom. 257=26 I.C. 411=22 Bom. L.R. 275.

——S. 103—*Official records — Suit for declaration that defendant's name is wrongly entered in the revenue papers by mistake.*

The burden of proving that plaintiff has been in separate exclusive possession and that defendant's name is wrongly entered in the revenue papers lies upon the plaintiff. (*Robertson*, J.) BHOLA *v.* BRIJ LAL.
27 P.W.R. 1912=13 I.C. 960=32 P.L.R. 1912.

Omission to discharge Onus.

——S. 102—*Omission to discharge onus—Effect of.*

Where both parties can produce evidence concerning the existence or non-existence of a particular fact, the party upon whom the burden of proof lies, does not discharge that burden by showing that the other side could equally have proved the contrary. (*Miller*, C.J. *and Mullick*, J.) RAM BILAS SINGH *v.* RAMYAD SINGH. **1 Pat. L.T. 535=5 P.L.J. 622=58 I.C. 303=2 U.P.L.R (Pat) 223.**

Onus Immaterial.

——Ss. 102, 103—*Onus immaterial when evidence is taken.*

When the entire evidence on both sides is once before the Court the debate as to onus is purely academical. 43 M. 567, foll. (*Mr. Ameer Ali.*) SRI CHIDAMBARA SIVAPRAKASA PANDARA SANNADHIGAL *v.* VEERARAMA REDDI.
45 Mad 586=31 M.L.T. (P.C.) 54=43 M.L.J. 640=16 L.W. 102=(1922) M.W.N. 749=49 I.A 286=(1922) P.C. 292 (P.C.).

——S. 102—*Onus Immaterial — fter evidence gone into.*

Where all the relevant facts are in evidence before the Court and all that remains for decision is what inference should be drawn from them and the controversy passes the stage at which discussion of burden of proof is pertinent. (*Sir Lawrence Jenkins.*) SETURATNAM *v.* VENKATACHALA. **43 Mad. 567=25 C.W.N. 485=(1920) M.W.N. 61=27 M.L.T. 102=11 L.W. 399=38 M.L.J. 476=22 Bom. L.R. 578=18 A.L.J. 707=56 I.C. 117=47 I.A. 76 (P.C.).**

——Ss. 102 and 103—*Onus immaterial—After evidence.*

Where the evidence on record is sufficient to enable a Court to come to a clear conclusion of fact, the burden of proof is immaterial. (*Lord Sumner.*) BASANTA KUMAR ROY *v.* SECRETARY OF STATE.
44 Cal. 853=1 Pat. L.W. 593=32 M.L.J. 505=21 C.W.N. 642=15 A.L.J. 398=25 C.L.J. 487=19 Bom. L.R. 480=(1917) M.W.N. 482=6 L.W. 117=22 M.L.T. 310=40 I.C. 337=44 I.A. 104 (P.C.).

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

——Ss. 102 and 103—*Onus immaterial—After whole evidence gone into.*

Quaere. — Whether any question of onus remains after the parties go into evidence. (*Ameer Ali*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS. **34 All. 511=39 I.A. 68=12 M.L.T. 392=15 O.C 278=14 Bom. L.R. 1073=10 A.L.J. 373=17 I.C. 395=23 M.L.J. 741=17 C.W.N. 49=16 C.L.J. 629=(1912) M.W.N. 1052 (P.C.).**

——S. 101—*Onus immaterial—Party electing to produce evidence first does not lose right to raise the plea of onus.*

If a person under a justifiable impression that the burden of proving a certain fact lies on himself elects to produce his evidence first, he does not thereby lose his right to insist that the burden of proof be laid on the right, *i.e*, opposite party. When the burden of proof is wrongly placed on one party but both parties have given evidence and there is no suggestion that any evidence has been excluded the appellate Court should proceed as if the burden of proof has been cast upon the right party. (*Hussain and Chamier*, JJ.) MUHAMMAD TAHIR *v.* RAGUBAR DAYAL. **11 I.C. 761=8 A.L.J. 786.**

——Ss. 102 and 103—*Onus immaterial.*

Where the entire evidence on both sides is once before the Court, the debate as to onus is purely academical and the controversy has passed the stage at which discussion as to the burden of proof is pertinent. The question that remains for the Court is one of inference from the facts proved. (*Mookerjee and Chotzner*, JJ.) ABINAS CHANDRA DAS *v.* MAJUB ALI CHOWDHURY. **36 C.L.J. 196=17 C.W.N. 328=1922 Cal. 461.**

——Ss. 102 and 103—*Onus immaterial.*

Where both parties adduce evidence in support of their respective cases and the Court on an examination of such evidence shifts the burden of proof from one party to the other the question of onus loses its importance, This must be more so at the appellate stage. (*Suhrawardy and Cuming*, JJ.) SUDHANYA, KUMAR SINGA *v.* GOUR CHANDRA PAL.
27 C.W.N. 134=35 C.L.J. 473=1922 Cal. 160.

——Ss. 102 and 103—*Onus immaterial.*

The question of onus of proof arises only when there is no evidence one way or the other which will enable the Judge to come to a conclusion upon the question of fact to be determined. But where evidence has been adduced by both the parties and the relevant facts are before the Court, the question of onus is immaterial and no importance attaches to the question on whom the initial onus lay. 22 C.W.N. 997; 43 Mad. 567, Rel. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. **25 C.W.N. 942=55 I.C. 694=34 C.L.J. 333.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

———Ss. 102 and 103—*Onus immaterial—Whole evidence taken.*

The question of burden of proof retains little, if any, importance where there is evidence on both sides. (*Richardson and Beachcroft, JJ*). BASIRUDDIN *v.* MOKIMA BIBI. **44 I C. 915=22. C.W.N. 709.**

———Ss. 102 and 103—*Onus immaterial—In face of finding.*

Where the lower appellate Court clearly finds that a document is a forgery, no question of burden of proof based on the fact, that the document was registered under S. 75 of the Registration Act, can arise. (*Coxe and Richardson*, JJ.) BHADRI NARAIN *v.* KODOSHAH, **28 I.C. 138.**

———S. 101—*Onus immaterial.*

The question of onus of proof only arises where there is a question of fact to be determined and there is no evidence one way or the other which will enable the Court to come to a conclusion. Where evidence is adduced by both parties, then the question of the burden of proof becomes immaterial and the Court has to determine on the evidence before it. (*Campbell and Moti Sagar*, JJ.) NIHAL CHAND *v.* GURDITTA MAL. **5 L.L.J. 451=1923 Lah. 641.**

———S. 101—*Onus immaterial when evidence adduced.*

Where the defendants led evidence on the issue as to notice they cannot be said to have held back their evidence because of the imposition of the *onus* on the other side, 46 I.C. 659; 29 All. 184, Fol.; 25 I.C. 648, Fol. (*Campbell*, J.) LADHA RAM *v.* JINDA RAM. **1923 Lah. 339.**

———Ss. 102, 103—*Onus immaterial—Mistake—Party accepting onus of adducing evidence—Effect of.*

A party accepting the burden of proof as upon him and adducing evidence, cannot in second appeal complain of prejudice on the ground that the burden of proof was wrongly thrown on him. (*Chevis*, A.J.C. *and Abdul Raoof*, J.) JADU NATH *v.* RAMUN MAL. **4 Lah. L.J. 426**

———S. 102—*Onus immaterial — After evidence taken.*

In the absence of an objection by a defendant that the onus was wrongly placed on him by the trial Court, the Appellate Court ought not to have shifted it on to the plaintiff. (*Scott-Smith*, J.) DAULAT *v.* KHAN. **81 P.L.R. 1915=29 I.C. 194=88 P.W.R. 1915.**

———Ss. 102 and 103—*Onus immaterial—Whole evidence on record.*

Where the whole evidence is on record the Court should examine it without reference to onus. (*Ayling and Seshagiri Aiyar*, JJ.) KANKAJAMMAL *v.* SECRETARY OF STATE. **40 Mad 1108=6 L.W. 346=32 M.L.J. 237=40 I.C. 516=21 M.L.T. 411.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

———S. 103—*Onus immaterial--All evidence taken.*

When the Court has all the evidence before it the question of burden of proof is not very important. In deciding whether a mortgage is void under S. 36, the Court need not consider the question whether the mortgage is invalid as a mortgage. (*Sadasiva Aiyar and Moore*, JJ.) ANANTARAMA *v.* YUSSUFJI. **31 M.L.J. 133=36 I C. 903=(1916) 2 M.W.N. 236.**

———Ss. 102 and 103—*Onus immaterial—After evidence let in.*

When the whole evidence is before the Court, the question of burden of proof is of very little value. (*Sadasiva Aiyar and Tyabji*, JJ.) RAMASUBBA AIYAR *v.* AVUDAI AMMAL. **25 I C. 123=(1914) M.W.N. 595.**

———Ss 102 and 103—*Onus immaterial.*

The question of onus is unimportant when the whole of the evidence is before the Court. (*White*, C.J. *and Tyabji*, J). KRISHNAMA CHARIAR *v.* VEERAVELLI KRISHNAMA CHARIAR. **38 Mad 166=13 M L.T. 285=(1913) M W.N. 355=19 I.C. 452=24 M L J. 517.**

Also (*Ayling and Tyabji*, JJ.) GADDIAN *v.* VEERAPPE. **26 I.C. 899=28 M.L J. 92.**

———Ss. 102, 103—*Onus immaterial.*

Where both sides have given evidence in full and the Court has come to a conclusion on the evidence the question of burden of proof entirely disappears, 48 C. 757, referred to. (*Kotwal*, A.J.C.) GOVERDANDAS *v.* HARLAL RAM SUKH. **1923 Nag. 62.**

———Ss. 102 and 103—*Onus immaterial.*

Where both parties called evidence upon a certain point, no question of burden of proof arises and the Court has simply to decide the point upon the facts what is the nature of the transaction. (*Stuart*, A.J.C.) JAG DEI *v.* SOHANLAL. **28 I.C. 360=2 O L.J. 140.**

———Ss. 102 and 103—*Onus immaterial.*

The question of onus dwindles into insignificance in second appeal. (*Coutts and Sultan Ahmad*, JJ.) RAM KHELAWAN *v.* RAM NATH. **1 P L.T 640.**

———Ss. 102 and 103—*Onus immaterial—After evidence is gone into.*

The question of onus is only one of evidence and when the evidence has been adduced in the case the Court is entitled to come to any findings. (*Jwala Prasad and Adami*, JJ.) BANAMALI SATPATHI *v.* TALUA RAM HARI. **1 P.L.T. 102=55 I.C. 841=5 P.L.J. 151.**

———Ss. 102 and 103—*Onus immaterial—After evidence gone into.*

Where a Court has the full evidence of both parties before it, the question of onus hardly arises. (*Coutts and Adami*, JJ.) SUKAN SAO *v.* KARU MARTON, **5 P.L.J. 87=54 I.C. 652=1 P.L.T. 13.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Onus Immaterial.

——**Ss. 102 and 103**—Onus *immaterial*—*After evidence is taken.*

The question of *onus* of proof only arises where there is a question of fact to be determined and there is no evidence one way or the other which will enable the Judge to come to a conclusion. In such a case, the Court has to decide whether the burden of proving the fact lies upon the plaintiff or the defendant. Whether in the first instance, the *onus* lies upon the plaintiff or upon the defendant if there is evidence adduced by both the parties then the question of the burden of proof becomes immaterial and the Court has to determine upon the evidence before it. (*Miller* C.J. *and Foster*, JJ.) JHARI SINGH *v.* TOKHARAM MARWARI. **52 I.C. 860 = 1 P.L T. 57.**

——**Ss. 102 and 103**—Onus *immaterial*—Onus *in Appellate Court.*

When evidence has been given before the Original Court on both sides, the question of burden of proof is of very little importance in a Court of appeal. (*Chapman and Atkinson*, JJ.) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. **48 I.C. 929.**

——**S. 103**—Onus *immaterial—Evidence let in.*

Where evidence had been let in on both sides and the evidence on one side had been believed no question of the burden of proof arises as the question is one of procedure. (*Chapman*, J.) JANG BAHADUR SINGH *v* RAM SUNDAR SINGH. **38 I.C. 817 = 1 P.L.W. 194.**

——**S. 103**—Onus *immaterial — After evidence let in on both sides.*

There can be no question of burden of proof when the Court has only to determine the case on evidence fully recorded on both sides. (*Chapman*, J.) MAHTAB *v.* SHEOBARAT TELI. **37 I.C. 353.**

Pardanashin Lady.

——**Ss. 101, 102 and 103.**

See also PARDANSHIN LADY.

——**S. 102**—Purdanashin *lad —Gift by—Binding nature of.*

The *onus* is on a person claiming under a deed of gift executed by a *purdanashin* lady to prove execution and intelligent understanding of the nature of the transaction by the grantor. *Aliter*, where the *purdanashin* is a woman of business like capacity. (*Lord Shaw.*) KALI BAKHSH SINGH *v.* RAM GOPAL SINGH. **36 All. 81 = 41 I.A 23 = 16 O C. 378 = 18 C.W.N. 282 = 12 A.L J. 115 = 15 M L.T. 130 = 19 C.L.J. 172 = 1 O.L J. 67 = 26 M L.J. 121 = (1914) M.W.N. 112 = 21 I.C. 985 = 16 Bom. L R 147 (P. C.).**

——**S. 102**—Purdanashin *lady — False recitals.*

Where a *purdanashin* lady sued to set aside a sale-deed executed by her to her agent on the allegation that she signed blank sheets and the recitals were made by the agent. *Held*, that as the document contained her signature she must establish that the recitals contained therein are untrue. (*Mookerjee and Beachcroft*, JJ.) BANSIRAM *v.* BANSI RAM. **35 I.C. 284 = 20 C.W.N 638.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Partition.

——**S. 101**—Purdanashin *ladies—Transaction—Burden of proof—On whom thrown.*

The *onus* of proof is thrown upon the creditor to prove that the *purdanashin* understood the nature and character of the transaction and that she signed the deed fully understanding it. To determine whether the transaction was voluntary, the whole of the circumstances should be looked into. (*Kanhaiya Lal Kendall*, A.J.C.) SALEHA BIBI *v.* OUDH COMMERCIAL BANK, LTD. **36 I.C. 673 = 3 O.L J. 482**

——**S. 103**— Purdanashin *lady — Deed executed by—Validity.*

The Court when called upon to deal with a deed executed by a *Purdanashin* lady must satisfy itself first that the deed was actually executed by her or some one authorised on her behalf with full understanding of what she is about to do, secondly, she had full knowledge of the nature and effect of transaction, thirdly, she had independent and disinterested advice in the matter. (*J. Das and Kulwant Sahay*, JJ.) MANSINGH *v* NAWLAKBHATI. **4 P.L.T. 335 = 2 P. 607 = 1923 P. 492.**

——**S. 103**—Purdanashin *lady*—Ex parte *decree—Suit to set it aside on the ground of fraud.*

A *purdanashin* lady suing to set aside an *ex parte* decree on the ground of fraud and concealment of facts must prove that the decree was obtained by concealment from the Court of material facts in circumstances which prevented her by fraud from putting the facts before the Court. (*Ree*, J.) PARBATI KOER *v.* LAGANYATH PRASAD. **36 I.C. 596.**

Partition.

——**S. 102— Partition** — *Hindu joint family.*

A disruption of the status of jointness of a Hindu family may take place by agreement without division of the estate by metes and bounds. Even an unambiguous expression of an intention by one member of the family to separate and hold his share separately is sufficient. But the question is one of fact and the *onus* is on the party alleging separation of interest or the intention to separate to establish it affirmatively. (*Mr. Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DUTT. **18 A L.J. 545 = 29 M L T. 71 = 39 M.L J. 18 = 23 Bom. L.R. 1348 = 56 I.C. 293 = 12 L.W. 759 (P. C.).**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Partition.

——S. 102—*Partition suit for partition.*

In a suit for partition in a Mitakshara family the party who alleges a previous partition must prove it. (*Fletcher and Richardson*, JJ.) PORMESHWAR DUBEY *v.* GOVIND DUBEY.
43 Cal. 459=33 I.C. 190=20 C.W.N. 25.

Possession.

——S. 103—*Possession.*

In possession suits the plaintiff has to prove that he was in possession and was dispossessed within 12 years of the suit. (*Chatterjee and Panton*, JJ.) RAKDAL CHANDRA GHOSE *v* DURGA DAS. **26 C W.N. 724=1922 Cal. 557.**

——S. 103—*Possession—Delivery of possession to auction-purchaser.*

Where the auction-purchaser has obtained delivery of possession through Court, strong evidence is required to show that he was not in possession. (*Miller and Tyabji*, JJ.) GOVINDA DOSS *v.* RAJA VENKATA PERUMAL.
26 I.C. 537=27 M.L.J. 193.

Pre-emption.

——S. 102 – *Pre-emption — Preferential right.*

A person claiming a preferential right of pre-emption over another co-sharer by reason of the relationship must prove it. (*Tudball and Rafique*, JJ.) BHAGWAN DAS *v.* TEJ RAM.
56 I.C. 148.

Presumption.

——S. 102, 103—*Presumption—Nature of document.*

Where a deed is attacked after a long period of years, the burden of proving that it is not what it purports to be lies heavily on the person attacking it. (*Ryves and Daniels*, JJ.) BISHAMBAR NATH *v.* MUHAMMAD UBAIDULLAH KHAN. **45 A. 581=21 A.L.J. 503=L.R. 4 A. 433=1923 All. 586.**

——S. 103—*Presumption — Joint family —Nature of property.*

Where one finds people living as joint and properties are acquired during this time the presumption is that they were acquired for the benefit of the joint family as a whole. The burden of adducing evidence to rebut the presumption lies on the party who denies the jointness. (*Greaves and Cuming*, JJ.) SHACHI KUMAR *v.* CHANDRA KUMAR SAMADDAR.
38 C.L.J. 348=1923 Cal. 204.

——S 102—*Presumption—Arbitration—Stay of suit.*

Where an application is made for stay of suit pending arbitration, burden of proof lies on the respondent to show reason why a stay should not be granted. (*Schwabe*, C.J. *and Krishnan*, J.) ANGLO PERSIAN OIL COY. LTD. *v.* PANCHAPAKESA IYER. **43 M.L.J. 653=18 L.W. 752=33 M.L.T. 103 (H.C.)=(1923) M.W.N. 772=47 Mad. 165=1924 Mad. 336.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Special plea.

—— Ss. 103—*Presumption—Consideration money—Execution of a deed.*

Where the execution of a deed is admitted or proved the natural presumption is that it was executed for consideration and if the executant sets up non-payment of the consideration money, he must prove it. (*Kanhaiyalal*, A.J.C.) NARAIN SINGH *v.* RUSTAM SINGH.
33 I.C. 777=3 O.L.J. 23.

Recitals.

——S. 103—*Recitals—Variance with facts —Onus.*

In a bond executed by defendant the *Onus* is on him to prove that the recital, that the consideration was paid was not in accordance with the facts. (*Woodroffe and Mookerjee*, JJ.) KALI CHARAN BASAK *v.* AMAR CHAND DAS.
41 I.C. 44.

Record of Rights.

——S. 101—*Record of rights - Entry in repudiation by both parties—Purden of proof.*

Where the plaintiff repudiates an entry in a Record of Rights, as fraudulently obtained by the defendants and the defendant repudiate it as erroneously made, the Court should not think that the burden lies upon the defendants to rebut an entry upon which the plaintiff did not place reliance. (*Mookerjea and Beachcroft*, JJ.) SOBHAN BAKSH *v.* BIRENDRA KISHORE MANIKYA BAHADUR. **30 I.C. 939 (2)=22 C.L.J. 144.**

——S. 102—*Record-of-rights—Entry challenged—Entry in record-of-rights.*

The burden of proof is upon the party alleging that a certain entry in a record-of-rights is incorrect. (*Teunon and Mullick*, JJ.) BHUBAM SAHU *v.* LAL SUNDAR JHANKAR. **23 I.C. 604.**

Special Agreement.

——S. 102—*Special agreement—Onus.*

A person setting up an oral agreement admissible under Evidence Act, S. 92, proviso 2, is bound to prove it strictly. (*Lord Dunedin*). MOTABHOY MULLAH *v.* MULJI HARIDAS. **39 Bom. 399=17 M.L.T. 402=28 M L J. 589=13 A.L.J. 529=19 C.W.N. 713=21 C L.J. 507=17 Bom. L.R. 460=2 L.W. 524=(1915) M.W.N. 532=29 I C. 223=42 I.A. 103 (P.C.).**

Special Plea.

——S. 103—*Special plea—Asserting—Title to—Trust property.*

Where a Trustee asserts private ownership in property proved to have been trust property the onus lie on trustee to prove his claim. (*Lord Shaw.*) T.P. SHRINIVASA CHARIAR *v.* C.N. EVALAPPA. **31 M.L.T. 1=45 M. 565=43 M.L.J. 536=16 L W. 247=49 I.A. 237=24 Bom. L R. 1214=21 A.L.J. 250=27 C.W.N. 317=36 C.L.J. 524=1922 P.C. 328 (P.C.).**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Special Plea.

——S. 103—*Special plea — Impartibility —Nature of proof.*

There is no presumption of law in favour of impartibility of property amongst the members of the Thattan Caste in Malabar. (*Schwabe*, C.J.) VAZHAYILPARKUM THATTAN . VAZHAYILPARKUM THATTAN RAMAN.
44 M L J. 274 = (1923) M.W.N. 173 = 46 M. 597 = 18 L.W. 525 = 1923 Mad. 452.

——S. 103—*Special plea.*

In a case under Sch. IV, R. 17 of the Madras City Municipal Act the Assessee has to prove income in order to claim benefit of proviso. (*Ayling and Venkatasubba Rao*, JJ.) SUN LIFE ASSURANCE COY. OF CANADA *v.* CORPORATION OF MADRAS. **16 L.W. 330 = (1922) M.W N. 155 = 31 M.L.T. 271 = 46 M. 10 = 42 M.L.J. 283 = 1922 Mad. 85.**

——Ss. 102, 103—*Special plea*—Bona fides—*Transfer for value.*

It lies on the person who pleads that he is *bona fide* purchaser for value to make out his case. (*Batten*, J.C.) MT. KASTUR BAI *v.* BALINAM. **1923 Nag. 15.**

——Ss. 102 and 103—*Special plea—Burden of proof.*

One of two joint executants of a promissory note desiring to escape liability on the ground of his being only a surety must prove that the payee had knowledge of that fact. (*Hartnoll and Twomey*, JJ.) BANK OF RANGOON, LTD. *v.* SOMASUNDARAM CHETTY. **8 L.B.R 168 = 26 I.C. 263 = 8 Bur. L T.1.**

Tenancy.

——S 103 - *Tenancy—Ryotwari land—Pattadar—Tenants under—Permanent tenancy.*

Where the tenants under a pattadar of ryotwari land claim a permanent tenancy the onus is on the tenants to prove this claim. (*Sir Lawrence Jenkins.*) SETURATNAM *v.* VENKATACHALA. **43 Mad. 867 = 47 I A. 76 = (1920) M W.N. 61 = 27 M.L.T. 102 = 25 C.W.N. 485 = 11 L.W. 399 = 38 M.L.J. 476 = 22 Bom. L.R. 578 = 58 I.C. 117 = 18 A.L J. 707 (P.C.).**
[On appeal from 20 I.C. 374 = 24 M L J. 571.]

——S. 102—*Tenancy—Onus.*

If a landlord brings a suit for recovery of possession of land on ground that the land in suit was not included in the tenancy, *Held*, that the onus of proving that the land was included in the tenancy lay on the defendant, (*Walmsley*, J.) NABIN CHANDRA NATH *v.* TIRTHABASI BHOWMIK. **56 I.C. 180.**

——Ss. 102 and 103—*Tenancy—Ejectment —Area of land demised.*

Where defendants are the tenants of the plaintiff and the only dispute is whether the disputed lands are within or without the boundaries of that tenancy the onus depends on the relative situation of the land in question

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and the admitted lands of the tenancy held by defendant. (*Mookerjee and Carnduff*, JJ.) AZMAT *v.* BISHUN PRAKAR. **52 I.C. 650 = 29 C.L.J. 607.**

——Ss. 102 and 103—*Tenancy—Suit for possession of land—Defendant setting up tenancy —Defendant found tenant of some land under plaintiff—Onus.*

Where defendant in a suit for possession of land is found to be the tenant of the plaintiff of some land, and the defendant sets up tenancy, the onus is not thereby cast on the plaintiff to prove that the land he seeks to recover is outside the tenancy of the defendant, but it is on the defendant to prove that it is within his tenancy. (*Mookerjee and Beachcroft*, JJ.) PRATAP CHANDRA *v.* JUDHISTER. **19 C.L.J. 408 = 23 I.C. 69 = 19 C.W.N. 143.**

——S. 103—*Tenancy—Defence of—Onus on defendant to prove his plea.*

Where the plaintiff claims the land in suit and the defendant does not deny plaintiff's title but pleads a subordinate interest under the plaintiff and in derogation of the latter's right to possession, the onus is on the defendant to make good his plea. (*Jenkins*, C.J. *and Mookerjee*, J.) DINANATH DAS *v.* GANESH CHANDRA SAHA. **20 I.C. 155 = 18 C.L.J. 544.**

——S. 102—*Tenancy—Burden of proof.*

Where plaintiff sued for possession of undivided half share of certain land as revenue sale purchaser and the defendant, pleaded its inclusion in a certain *Howla*, the burden of proving its inclusion in a certain *Howla* lies on the defendant. (*Jenkins*, C.J. *and Chatterjee*, J.) RUTNESSUR SEN *v.* KALI KUMAR BIDYA BHUSAN. **15 I.C 701 = 16 C.W.N. 693.**

——S. 101—*Tenancy — Occupancy right set up—Burden of proof.*

Where a tenant sets up a permanent occupancy right the burden of proving it is primarily on him. But the burden is of a shifting nature and may change as facts are proved. (*Krishnan and Oagers*, JJ.) PONNALAGU KONAN *v.* SINNIAH ODAYAN. **70 I C. 27 = (1921) M.W.N. 719.**

——S. 103—*Tenancy —Lease—Burden of proving what lands were demised — Lessee mixing leased lands with his own—Effect.*

A lessor suing to recover possession of land demised by him must prove what lands he demised, but the onus of proof will be shifted to the tenant in cases where the lessee mixes his own lands with those demised to him. 6 M. 263, Ref. (*Benson and Sundara Aiyar*, JJ.) ITTITHAYARI NAMBUDRI *v.* KANVASTRI ITHRI AMMA. **14 I.C. 284.**

——S. 103—*Tenancy—Suit for possession—Onus on person suing.*

N sued M and others for recovery of two plots of land on the ground that the lands were held

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under a demise. M pleaded that the lands were held under a Kanom. *Held*, that the onus of proving the title by demise was on N who asserted it and an attestation by M of an instrument affecting the plots did not amount to an admission of N's title by M. (*Benson and Sundara Aiyar*, JJ.) KUVIYIL PARKUM *v.* VARNAKAT ILLATH GANAPATHI.

35 Mad 168 = 21 M L J. 650 = 9 M.L.T 423 = 10 I.C. 424 = (1911) 2 M.W.N. 315.

———S. 101 — *Tenancy — Landlord and tenant—Relationship.*

Where landlord refuses to admit tenancy the tenant must prove that he is a tenant. (*Batten*, J.) ALLAM SINGH *v.* SETH GOPAL SINGH.

1923 Nag. 7.

Title.

———Ss. 102, 103—*Title—Dispute as to boundary line*—Onus *of proof—Waste land.*

On questions of boundary, specially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession, the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants and both parties are bound to do what they can to aid the Court in ascertaining the true line. But the duty of both parties to aid the Court in ascertaining the true line is in cases where the dividing line in dispute runs through waste lands which have not been the subject of definite possession. This rule is not applicable where the case of both parties is that the land was capable of possession and each party was in actual possession of the land comprised within his tenure. 21 C. 504, Dist; 27 C.L.J. 599, Ref. (*Chatterjee and Panton*, JJ.) RADHA KRISHNA DAS *v.* MATIYAR RAHMAN.

65 I.C. 748.

———S. 103—*Title—Goods—Detention without consideration—Unstamped agreement of sale.*

Where a person has delivered goods (in pursuance of an unstamped agreement) and has got nothing in return for it, though he cannot be allowed to prove his unstamped agreement of sale, yet the *onus* is on the other party to show that he has the right to detain the goods. (*Coutts Trotter and Seshagiri Aiyar*, JJ.) CHAMI *v.* ANNA PATTAR **33 I.C. 661.**

———S. 103—*Title—Suit for declaration of title—Order under S. 145, Cr. P. C.—Presumption.*

A decision in proceedings under S. 145, Cr. P. Code, does not throw the *onus* of proving his title on the loser in those proceedings. The decision in proceedings under S. 145. Cr. P. Code, is not of such a nature as to give rise to a presumption in a Civil Court in favour of the winning party in those proceedings. (*Adami*, J.) MT. JANTRA KOER *v.* ALI JAN DARJI.

1923 P. 401.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Will.

Transferability of Holding.

———S. 103—*Transferability of holding.*

Where acquiescence and recognition by the landlord of a transfer of a non-transferable occupancy holding is pleaded, the *onus* lies on the party setting up the plea. (*Das and Adami*, JJ.) BHONULAL CHAUDHURI *v.* VINCENT.

1922 P. 69.

Undue Influence.

———S. 103—*Undue influence—Proof of.*

The *onus* is on the person alleging it to show that influence was unduly exercised. Mere proof of fiduciary position is not enough. (*Lord Shaw.*) POOSATHURAI *v* KANNAPPA.

38 M.L.J. 349 = 18 A.L.J. 341 = 11 L.W. 485 = (1920) M W N 317 = 2 U P L R. (P.C.) 62 = 55 I.C. 447 = 22 Bom L R. 583 (P.C.).

———S. 103—*Undue influence*—Onus.

Where there is nothing on the face of the pro-note or on the evidence to indicate that the bargain is unconscionable or to show that the plaintiff was in a position to dominate the will of the defendant the *onus* lay on the defendants to prove undue influence and immorality. (*Kanhaiya Lal*, A.J.C.) GHAZAFFAR HUSSAIN *v.* MAHABIR PRASAD. **17 I.C. 309.**

Vendor and Purchaser.

———S. 103—*Vendor and purchaser—Title of vendor—Proof of.*

A person who derives his title through a purchase must prove that his vendor had a title in the property sold. 28 All. 479, Foll. (*Broadway*, J.) GULAB DEBI *v* MONJI RAM.

51 I.C. 573 = 38 P.L.R. 1919.

———S. 102—*Vendor and purchaser—Inclusion of land*—Onus.

Where a land is not specially mentioned in a sale-deed and cannot even be said to be mentioned by implication, the burden of proving that that land was sold to a party lies on that party. (*Johnstone*, J.) MUHAMMAD NAWAZ *v.* GHULAM HAIDER. **75 P.L.R 1915 = 29 I.C 167 = 250 P.W.R. 1915.**

———Ss. 102 and 103—*Vendor and purchaser—Title—Burden of proof—Possession.*

Where a sale-deed has been executed and registered but it is claimed that the vendor has acquired title by prescription in as much as possession was not given to the purchaser the burden of proving lies on the person asserting these facts. (*Sundara Iyer and Ayling*, JJ.) M. KALLU PAPPAKKA *v.* YEDDULA ROSIREDDI. **15 I.C. 282.**

Will.

——— S. 102—*Will legacy—Validity—Consent of heir as to quantum.*

The Mahomedan Law does not allow a testator to leave a legacy to any of his heirr unless the other heirs agree but any single heir may so agree as to bind his own share. The

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Will.

burden of proving such consent is on the legatee. (*Lord Phillimore, Ameer Ali, Jenkins and Lord Salvesen.*) A. T. SALAYJEE *v.* FATIMA BIBI. **44 M.L.J. 332 = 25 B.L.R. 301 = 37 C.L.J. 302 = 18 L.W. 44 = (1923) M.W.N. 522 = 1 R. 60 = 2 Bur. L.J. 1 = 32 M.L.T. 96 = 1922 P.C. 391.**

——**Ss. 102 and 103**—*Will—Testamentary capacity.*

The *onus* of proving the testamentary capacity of a testator is on those propounding the will. (*Lord Robson.*) BUR SINGH *v.* UTTAM SINGH. **38 Cal. 355 = 38 I.A. 13 = 1 P.W.R. 1911 = 15 C.W.N. 177 = 13 C.L.J. 72 = 21 P.L.R. 1911 = 13 Bom. L.R. 59 = 9 M.L.T. 115 = (1911) I M.W.N. 36 = 8 A.L.J. 123 = 4 Bur. L.T. 35 = 21 M.L.J. 100 = 9 I.C. 33 = 21 P.R. 1911 (P.C.).**

——**S. 101**—*Will — Burden of proving disposing mind.*

Burden of proving that testator was of a disposing mind is on propounder of a will where testator excluded an heir by a will executed on his deathbed. (*Rattigan, J.*) INDAR NARAIN *v.* ONKAR LAL. **141 P.L.R. 1911 = 10 I.C. 130 = 20 P.R. 1912 = 233 P.W.R. 1911.**

——**S. 102**—*Will—Proof of—Onus on propounder.*

Whoever puts forward a will as genuine, must prove it and cannot throw on the opposite party the burden of proving the negative. 38 M. 166, Followed. (*Sadasiva Aiyar and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHI AMMANGAR. **40 Mad 672 = 34 I.C. 766 = 30 M.L.J. 504.**

——**Ss. 102 and 103**—*Will—Revocation—Burden of proof—Document revoking a will.*

The burden lies heavily upon persons, setting up a document as having the effect of revoking a previous will, of proving the fact of its execution and of proving that the executant understood the terms and nature of the deed, especially where there are circumstances exciting suspicion in the mind of the Court. 27 C. 521; 32 M. 400. (*Piggott, J.C. and Lindsay, A.J.C.*) MIR SYED HUSSAIN *v.* TAIABA BEGAM. **26 I.C. 547 = 1 O.L.J. 591.**

——**S. 105**—*Defamation—Privileged occasion.*

The *onus* of proving privilege in an action for libel is on the person pleading it. (*Mr. Ameer Ali.*) GOVIND DAS *v.* BISHAMBHAR DAS. **39 All. 561 = 15 A.L.J. 629 = 33 M.L.J. 103 = 2 P.L.W. 125 = 21 C.W.N. 1113 = 19 Bom. L.R. 707 = 22 M.L.T. 132 = 26 C.L.J. 282 = 6 L.W. 494 = (1917) M.W.N. 817 = 40 I.C. 641 = 44 I.A. 192 (P.C.).**

——**S. 105**—*Exemptions — Presumption—Burden of proof.*

EVIDENCE ACT (I of 1872), S. 105.

The law requiries that the *onus* of proving circumstances which give the benefit of the general exceptions in the Penal Code to an accused person lies on him, and in the absence of evidence the presumption is against the accused. But this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record whether produced by the prosecution or the defence, that the general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the exception. (*Walsh and Ryves, JJ.*) MT. ANANDI *v* EMPEROR. **45 A. 329 = 24 Cr. L.J. 225 = 1923 All. 327 (2).**

——**S. 105**—*Defamation — Exemption—Penal Code, Ss. 499, 500—Burden of proof.*

In a defamation case, the accused must prove his good faith, public good and truth and legality of his expressions. (*Walsh, J.*) BHAGWAN SINGH *v.* ARJUN DUTT. **2 U.P.L.R. (All) 182 = 57 I.C. 84 = 21 Cr.L.J. 564 = 18 A.L.J. 816.**

——**S. 105**—*Exception—Burden of proof.*

The incidence of the burden of proof means that the person on whom it lies must prove that fact. But the meaning of the expression "proved" as defined in S. 3 of the Evidence Act, is in no way affected by the incidence of the burden of proof. When evidence has been given by the defence to support the defence of an exception, the burden of proof is discharged, if the evidence is believed and the jury have their ordinary duty of deciding a question of fact on the evidence before them. (*Newbould and Suhrawardy, JJ.*) MAHOMED YUNUS *v.* EMPEROR. **50 Cal. 318 = 1923 Cal. 317.**

——**S. 105**—*Lunacy — Exemption from criminal liability—Unsoundness of mind.*

When unsoundness is pleaded as a defence to a criminal charge, the burden of proof rests on the accused. (*Richardson and Shamsul Huda, JJ.*) RAM SUNDAR DAS *v* EMPEROR. **29 C.L.J. 209 = 20 Cr. L.J. 383 = 50 I.C. 991 = 23 C.W.N. 621.**

——**S. 105**—*Gambling—Proof that it is a game of mere skill—Onus on the accused.*

The onus of showing that any offence falls within a general exception to Gambling Act (*i.e.*) that it was game of mere skill is on the accused. (*Holmwood and Sharfuddin, JJ.*) RAM NEWAZ LAL *v.* EMPEROR. **23 I.C. 484 = 15 Cr. L.J. 276.**

——**S. 105**—*Defamation—Exemption.*

The person alleging privilege or exemption to a charge of defamation must prove that he made a statement in good faith to a person who has authority over the person complained against. (*Seshagiri Aiyar, J.*) *In re* KAKUMARA ANJANEYALU. **35 I.C. 813 = 17 Cr. L.J. 381.**

EVIDENCE ACT (I of 1872), S. 105.

———S. 103—Onus—*Discharge.*

The question of discharge of an *onus* is not a question of law and where the whole evidence is let in, the question of onus is of little importance. (*Ayling and Tyabji*, JJ.) GADIAN *v.* VEERAPPA. **26 I.C. 889=28 M.L.J. 92.**

———S 103—*Bailment—Loss— Negligence.*

In a suit against a bailee for loss of goods, though the bailee must call all the witnesses who were on the spot in proof of his having acted without negligence, that does not discharge the plaintiff from establishing from proving negligence on the part of the bailee or his servants. (*Sir Walter Phillimore.*) DWARAKA NATH *v* THE RIVER S.N. CO., LTD, **20 Bom. L.R 735=27 C.L.J. 615= 8 L.W. 4=23 M L T. 876= 46 I.C. 319=(1918) M.W.N. 435 (P.C)**

———S. 106—*Acknowledgment—Proof of—Onus of mortgagee in possession of deed.*

The plaintiff suing for redemption having pleaded that the mortgage was within time, it was not necessary to plead that the acknowledgments saved the operation of limitation. The mortgagees being in possession of the mortgage-deed the date of the mortgage was within their particular knowledge and not that of the plaintiff and in the circumstances of the case the acknowledgments must be presumed to have been made before the expiration of the sixty years from the date of the mortgage. (*Richards*, C.J. *and Banerji*, J) KAMALA DEVI *v*, GURDAYAL. **51 I.C. 283=17 A.L.J. 330.**

———S. 103—*House trespass by night—Intention to annoy.*

Where a person accused of lurking house trespass by night, pleads in defence that he had a specific intention in entering the house, *i.e.*, to carry on a love intrigue in secret and not to intimidate, insult or annoy, the onus of proof is on him. (*Piggott and Walsh*, JJ.) CHOTTE LAL *v.* EMPEROR. **40 All. 221= 20 Cr. L J. 119=49 I C. 103= 16 A L.J. 153.**

———S. 106—*Scope of—Burden of.*

A party who has special means of knowledge of a fact is under the obligation of proving that fact. (*Piggott and Lindsay*, JJ.) KHIAL RAM *v.* TAIKRAM. **38 All. 540=36 I.C 45?= 14 A.L J. 834.**

———S, 106 —*Honest intention — Lurking house trespass.*

Where an accused is *prima facie* guilty of lurking house trespass the onus of proving an honest intention is on him as it is within his knowledge. (*Knox*, J.) MULLA *v.* EMPEROR. **37 All. 395=16 Cr. L.J. 435=29 I.C. 67= 13 A.L.J. 625**

———S. 106—*Date of birth—Father's knowledge.*

Per *Chamier*, J.—Death and birth of a child is not specially within the father's knowledge. It is within any one's who was present at the occurrence. (*Karamat Hussain and Chamier*, JJ.) DALGANJAN SINGH *v.* PARSIDH NARAIN SINGH. **11 I.C. 202.**

EVIDENCE ACT (I of 1872), S. 106.

———S. 106 —*Executor—Retention of assets —Onus of proof that debts were true and alive.*

In a suit for accounts against the executor, the point in fact raises the question of the extent of the assets received by him when he became executor; the burden of proof on this point will entirely lie on him. (*Mookerjee and Chotzner*, JJ.) PULINBIHARI DEY *v.* SATYACHARAN DEY. **36 C.L J. 367= 1923 C. 79.**

———S. 106—*Majority—Age of puberty.*

The fact that a Mohamedan girl below the age of 15 years has attained puberty is a fact within her special knowledge and the burden of proving the fact lies on her. (*Newbould and Duval*, JJ.) HELALONNESSA *v.* RAJAB ALI. **53 I.C. 94.**

———S 106—*Criminal trial—Defence.*

The presumption under S. 106 is very weak as compared to the presumption of innocence when the trial is one for murder. If an accused after a case has been proved against him withholds evidence in disproof, inferences unfavourable to him may be drawn. (*Teunon and Shamsul Huda*, JJ.) ASHREF ALI *v.* EMPEROR. **19 Cr. L.J. 81=43 I C 241= 21 C.W.N. 1152.**

———S. 106—*Carrier—Loss of goods—Negligence.*

The onus of proving absence of the negligence is on the common carrier for the loss or the damage to goods in *prima facie* proof of negligence. (*Mookerjee and Richardson*, JJ.) AKHIL CHANDRA SHAHA *v.* INDIA GENERAL NAVIGATION AND RAILWAY COMPANY, LD. **29 I.C. 260=21 C.L.J. 565.**

———S. 106—*Landlord and tenant—Defendant (tenant) claiming land as part of his jote.*

Where in a suit for possession by the Zamindar the defendant (tenant) admitted the plaintiff's title but claimed the land as part of the *jote*, held the onus lay on the defendant to prove it. (*Stephen and D. Chatterjee.*) SANATAN GOSWAMI GANESH *v.* CHANGA. **18 I.C 393.**

———S. 106—*Landlord and tenant—Burden of proof of patwari's authority.*

It is on the landlord first to prove what powers his patwari had as the matter is peculiarly within his knowledge. (*Mookerjee and Teunon*, JJ.) SUDAMAN *v.* BEHARI MAHTON. **10 I.C. 456=15 C.W.N. 953.**

———S. 106—*Date of birth—Suit to set aside mortgage by mother—Age of plaintiff.*

In a suit to set aside a mortgage effected by the plaintiff's mother on his behalf during his minority, the onus o proof that he was under 21 when he instituted the suit is on the plaintiff. (*Broadway*, J.) RAM KISHEN *v.* ATMA RAM. **42 I.C. 76=148 P.W.R. 1917.**

EVIDENCE ACT (I of 1872), S. 106.

———S. 106—*Limitation — Exemption — Plaintiff to prove affirmatively, that his age was under 21 for purposes of limitation.*

For purposes of limitation, it is for the plaintiff to establish affirmatively and clearly that he was under 21 years when he filed the suit and proof of a possibility that he might be under that age is not enough. (*Kensington*, C.J. *and Rattigan*, J.) CHARANJIT SINGH *v.* BISHEN SINGH. **167 P.L.R. 1914 = 23 I.C. 462 = 78 P.W.R. 1914.**

———S. 106—*Criminal trial—Absence of explanation from accused—Presumption.*

An accused person is always entitled to hold his tongue; but when the only alternative theory to his guilt is a remote possibility, which, if correct, he is in a position to explain, the absence of any explanation must be considered in determining whether the possibility should be disregarded or taken into account. (*Ayling and Phillips*, JJ.) SMITH *v.* EMPEROR. **43 I.C. 605 = 19 Cr.L.J. 189.**

———S. 106 — *Vendor and purchaser—Colourable sale.*

Where an ostensible vendee has paid out of his pocket sums towards the amounts due by his vendor and which the vendee has undertaken to pay, the burden of proving that the transaction was intended to be a colourable one lies very heavily on the vendor. 29 I.C. 970, Foll. (*Ayling and Sadasiva Aiyar*, JJ.) VENKATASUBBA SASTRIAL *v.* SUBRAMANIA AIYAR. **(1917) M.W.N. 674 = 42 I.C. 827 = 6 L.W. 703.**

———S. 106—*Consideration—Contest by stranger.*

When a suit on a mortgage is contested by a stranger, who denies that the bond was executed and also asserts that the mortgage was devoid of consideration, the onus is on the plaintiff to prove his case. 6 C.L.J. 659, Foll; 25 I.C. 426, Ref. to; 35 C. 420; 27 A. 271 P.C.; 26 I.C. 35, Dist. (*Spencer and Kumaraswami Sastri*, JJ.) KUMARAPPAN CHETTIAR *v.* NARAYANAN CHETTIAR. **35 I.C. 455.**

———S. 106—*Zamindar—Karnam.*

The Zamindar only appoints Karnams under S. 9 of Regulation XXIX of 1882. The Zamindar is not bound to see that the Karnam keeps a register of the service names for their localization or to keep one himself; in the absence of which, the presumption of special knowledge within the meaning of S. 106 on the part of the Zamindar or his predecessor cannot be raised. (*Sankaran Nair and Oldfield*, JJ.) SECRETARY OF STATE *v.* RAJAH OF PITTAPUR. **24 M.L.J. 530 = 19 I.C. 667 = (1913) M.W.N. 478**

———S 106—*Assets—Proof of.*

Once it is admitted or proved that a person is in possession of the assets of the deceased it is on him to satisfy the Court as to the extent of the assets received by him and to account for them. (*White*, C.J. *and Abdur Rahim*, J.) RANCHODE DAS *v.* KRISHNA DAS. **21 M.L.J. 1096 = 10 M.L.T. 272 = 12. I.C. 253 = (1911) 2 M.W.N. 271.**

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———S. 106—*Suit for profits by co-sharer—Amount of profits*—Onus.

In a suit for profits by co-sharers, the burden of proving amount of arrears lies on the lambardar. (*Prideaux*, A.J.C.) SARJE RAO *v.* HARAK CHAND. **6 N.L.J. 234 = 1923 Nag. 287.**

———S. 106 — *Landlord and tenant — Repudiation of authority of agent by landlord.*

Where a landlord repudiates the authority of a gumastha to give a receipt which recognises the sub-division of a tenure or holding, the *onus* of proof is on the landlord as the relations between himself and his servant are a matter primarily within his knowledge. (*Miller*, C.J. *and Mullick*, J.) SRIKISHUN PRASAD *v.* MUSAMMAT JEOHASI KUER. **1918 P. 210 = 45 I.C. 294 = 4 P.L.W. 316.**

———S. 106—*Scope of—Requisites for the application of the section.*

For the application of S. 106 (as regards burden of proving matters within the special knowledge of a party) there must be something peculiar in the knowledge and the rule of burden of proof makes no distinction between individuals and corporations. 5 W.R. 148, Dist. (*Mullick*, J.) LACHMI NARAIN MARWARI *v.* CHAIRMAN OF THE RANCHI MUNICIPALITY. **37 I.C. 269 = 1 P.L.J. 168.**

———S. 106—*T. P. Act — Extension to Burma—Unregistered sale-deed.*

Where vendee is in possession as owner, the burden of proving that the sale took place after the extension of the Act and that it was invalid or want of registration lies on the person disputing the right. (*Ormond*, J.) MAUNG PO MAUNG *v.* MAUNG RAING. **7 Bur. L.T. 86 = 24 I.C. 57 = 7 L.B.R. 262.**

———S. 106—*Offence—Import of cocaine.*

The burden of proving facts specially within the knowledge of any person (*i.e.*), that a parcel of cocaine was believed to be one of toys, is on that person. (*Parlett*, J.) EMPEROR *v.* STELLA. **20 I.C. 600 = 14 Cr. L.J. 440 = 6 Bur. L.T. 129.**

———S. 106, (a)—*Intention— Offence under S. 373, I.P.C.*—Onus *on accused.*

When the circumstances go to show that the intention of the lady was to employ the girl as a prostitute as soon as she was physically ready for the purpose, the burden lay upon her of proving that she intended to wait until the age of majority had been reached. (*Walmsley and Suhrawardy*, JJ.) KHETRAMANI *v.* EMPEROR. **35 C.L.J. 451 = 24 Cr. L.J. 104 = 1922 Cal. 539.**

———Ss. 107 and 108—*Construction—No presumption of date of death.*

Ss. 107 and 108 only relate to the date when the suit was brought, that is to say, as to whether a man is alive or dead as the case may be

at the date of the suit, and not at some particular period anterior to the suit. The decisions also establish that there is no presumption as to whether a particular person was dead at any time within the period in the question. (*Marten and Fawcett*, JJ.) RAMACHANDRA SADASIV *v.* KESHO DHONDU. **1923 Bom. 208**

———Ss. 107 and 108—*Presumption in law and in fact.*

There is no presumption that a man was alive until the expiration of seven years from the date he was last heard of. Ss. 107 and 108 deal with the procedure to be followed when a question is raised before a Court as to whether a person is alive or dead. The sections do not lay down any presumption as to how long a man was alive or at what time he died. 37 C. 103; 34 A. 36, Ref. Whether a Court would or would not make a presumption that a person last heard of within seven years is alive depends upon the circumstances of each case assuming that a Court may make such presumption. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) VEERAMMA *v.* CHINNA REDDY.
37 Mad. 440=16 I.C. 43=24 M.L.J. 443.

———S. 107—*Presumption as to time—Not possible.*

S. 107 does not apply when the question is not merely one of death but of death on a particular day, no presumption as to the time of death can be drawn. The party concerned to make out death on a particular date must prove it. 14 M.L.J. 464; 40 B. 239; 46 R.R. 789, Ref. (*Drake-Brockman*, J.C.) PARSOO *v.* MUNNALAL.
39 I.C. 21=13 N.L.R. 16.

———S. 103—*Date of death—Presumption as to.*

What the Court may presume under S. 108 of the Evidence Act is confined to the factum of death. It cannot presume that because a person has not been heard of, he died at any particular moment or in any particular way, or from any particular cause. 34 A. 36, Ref. (*Walsh and Ryves*, JJ.) REKHAB DAS *v.* MT. SHEOBAI. **45 A. 466=21 A.L.J. 393=L.R. 4 A. 532=1923 All. 495.**

———S. 108—*Presumption as to death—Date of death.*

Under S. 108 there is a presumption that a person who is not heard of for seven years is dead, but no presumption arises under that section as to the date of such person's death. (*Lindsay and Kanhaiya Lal*, JJ.) MAIRAJ *v.* ABDUL. **63 I.C. 286=19 A.L.J. 713.**

———Ss. 108 and 2—*Muhammadan Law—Time of death—Presumption of death.*

S. 2 of the Evidence Act has abrogated all rules of evidence laid down by the Muhammadan Law and therefore S. 108 will govern the case of a Muhammadan missing for more than seven years. 7 A. 297, Foll. A rule of presumption as to death is a rule of evidence and not of

succession. A person missing for more than seven years is presumed to be dead but there is no presumption as to the time of his death. (*Griffin and Chamier*, JJ.) YUSUF ALI BEG *v.* AYUB BEG. **18 I.C. 920=11 A.L.J. 353.**

———S. 108—*Date of death—Missing person—Presumption, nature of.*

S. 108 of the Evidence Act lays down that a person missing for seven years is dead; there is no presumption therein as to the date of death. (*Richards*, C.J., *Banerji and Tudball*, JJ.) MAHAMMAD SHERIF *v.* BANDE ALI.
34 All. 36=11 I C 474=8 A.L.J. 1052.

———S. 108—*No presumption as to date of death.*

S. 108 of the Evidence Act has no reference whatever to the date of death of a person who has not been heard of for 7 years. The date of death must be proved by the party who is interested in establishing that a person died on or before a particular date. (*Shah*, A.J.C. *and Crump*, J.) GOPAL BHIMJI AVTE *v.* MANAJI GANUJI. **47 Bom. 451=25 Bom. L.R. 134=1923 Bom. 163.**

———S. 108—*Date of death—Person not heard of for seven years—Presumption of death.*

A man is presumed to be alive until he is dead. A person asserting that a particular man is dead has to prove it. If he could show that a man has not been heard of for seven years then the Court will presume his death. But the earliest date on which the death can be presumed can only be the date when the suit was filed. It cannot have a further retrospective effect. (*Macleod*, C.J. *and Heaton*, J.) JESHANKAR REVASHANKER *v.* BAI DIVALI.
57 I.C. 525=22 Bom. L.R. 771.

———S. 108—*Onus of affirmative proof—Not discharged by presumption under.*

The onus that lies on a reversioner to show affirmatively that his action is within twelve years of the actual death of the widow, is in no way removed by any presumption under S. 108. (*Scott*, C.J. *and Shah*, J.). JAYAWANT JIWAN RAO *v.* RAMCHANDRA NARAYAN JOSHI. **40 Bom. 239=33 I C 484=18 Bom. L.R. 14.**

———S. 108—*Evidence of relatives—Value of.*

Where the near relatives deposed that they had not heard of the person in question, *Held*, the presumption under S. 108 of Indian Evidence Act should be drawn. (*Broadway and Campbell*, JJ.) KHAN CHAND *v.* MT. JAWANDI. **1923 Lah. 174.**

———S 108—*Death of a person—Presumption as to.*

There is a presumption in favour of continuance of life and it is for the person asserting death to prove it. The death of a person cannot be presumed to have taken place more than 7 years before the date of suit calling the

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question into controversy. 22 Bom. L.R. 771 ; 1 Lah. 554, foll. (*Wilberforce*, J.) MUHAMMAD CHIRAGH *v.* ABDUL HUQ. **64 I C. 468.**

——S. 108.—*Continuance of life — Presumption of.*

The presumption is in favour of continuance of life and the onus of proving the death of a person lies on the party who asserts it. (*Scott-Smith and Leslie Jones*, JJ.) TANI *v.* RIKHI RAM. **114 P.L R 1920=1 Lah 554= 56 I C 742=2 Lah L.J. 481.**

——S. 108—*Date of death—Presumption.*

The presumption under S. 108 is a presumption of the fact of death and not of the date of death. If a person seeks to establish the precise date of death he must do so by actual evidence. (*Shadi Lal*, J.) BASHARAT *v.* NAJIB KHAN. **38 P R. 1918=68 P.W.R. 1918= 45 I.C. 70=123 P.L R. 1918.**

——S. 108—*Presumption as to death—Hindu Law rule of 12 years abrogated.*

In a suit by plaintiffs for the recovery of the properties of one T, as the persons entitled to them as his heirs or nearest reversioners, they alleged that their father K, had not been heard of for nearly 10 years before suit and that they were thus the nearest reversioners. *Held* that the rule of Hindu Law that at least 12 years should elapse before a man unheard of should be treated as dead was inapplicable to the case but that the 7 years' rule under S. 108 of the Evidence Act applied and that as he had not been heard of for 10 years before suit he must be presumed to have died on the date of suit. The rule of Hindu Law referred to is only a rule of evidence and is not applicable after the passing of the Evidence Act. (*Krishnan and Venkatasubba Rao*, JJ.) PONDURI ADEYYA *v.* JALADI BUREYYA. **32 M.L.T. (H C.) 6= (1923) M W.N. 49=43 M.L.J. 725= 16 L.W. 976=1923 Mad. 182.**

——S. 108—*Presumption as to date of death.*

When a person is not heard of for seven years there is a presumption of his death but there is no presumption as to the date of his death. But where the date may be fixed either during or after the seven years indifferently, there is a presumption in favour of death after the lapse of seven years. (*Oldfield and Ramesam*, JJ.) BAL NAIKEN *v.* ACHAMA. **14 L.W. 315=41 M.L.J. 295= 69 I C. 835=(1921) M.W.N. 610.**

——S. 108—*Presumption of death—Onus—Presumption that no heirs were left behind.*

It is for the party who wants the Court to presume the death of a person at any particular time to prove it affirmatively by evidence. There is no presumption arising from the death of the individual that he left no heir behind him. (*Seshagiri Aiyar and Bakewell*, JJ.) PONNALOORI ELLAMAN DAYYA *v.* CHILAKAPATHI LAKSHMANAYYA. **6 L.W. 633=38 M.L.J. 295= 42 I.C. 241=(1917) M.W.N. 722.**

EVIDENCE ACT (I of 1872), Ss. 109.

——S. 108—*Date of death—Presumption—Nature of.*

No presumption can be drawn under S. 108 as to the date of death of a person. (*Lindsay*, J.C.) FAQIR BAKSH *v.* DAN BAHADUR SINGH. **21 O C. 143=46 I C 808= 5 O L J. 475.**

——S. 108—*No presumption as to time of death.*

Though a person who has not been heard of for 7 years is presumed to be dead, there is no presumption as to the time of death and if any one seeks to establish the precise period at which such person died, he must do so by actual evidence. (*Das and Bucknill*, JJ.) MAHANT RAMRUP *v.* LAL CHAND MARWARI. **1 P. 475=3 P.L.T. 352=1922 P. 243.**

——S. 109—*Landlord and tenant—Land once held under lease—Presumption of continuance.*

There is a strong presumption that land once shown to be held under a written instrument of lease continues to be held under it, as long as it is occupied by the same tenant and unless the contrary is shown by evidence of a cogent nature, the inference should be in favour of the tenant. (*Farran*, J.) PARAMANANDA JIVANDAS *v.* ARDERHIR FRAMJI. **27 I.C. 812=16 Bom. L.R. 723 (Note).**

——S. 109—*Mortgage—Proof of.*

Where the title of the plaintiff is admitted and the defendants are shown to have come into possession as mortgagees under the plaintiff, Courts will not demand such strict proof of the mortgage sued on, as where the title is denied and possession is not shown to have been under the owners. (*Spencer and Seshagiri Aiyar*, JJ.) NANU NAIR *v.* KANTAN ASHTA MOORTHI. **29 M.L.J 772= 29 I.C. 386=2 L.W. 509.**

——S. 109—*Lessor and lessee—Presumption—Burden of proving relationship.*

When the existence of a relationship of lessor and lessee is proved, its continuance is presumed under S. 109 and the burden of proving the contrary lies upon the person who denies it. (*Sadasiva Aiyar and Hannay*, JJ.) SUBBANNA *v.* VENKATARAYUDU. **27 I C. 804=28 M L J. 361.**

——S. 109—*T P. Act, S. 116—Landlord and tenant—Tenancy for a year—Holding over—Presumption.*

Where a tenant continues to work on the holding after expiry of the lease for one year, he must be presumed to have renewed the lease for another year under S. 109 of the Evidence Act and S. 116 of the Transfer of Property Act. (*Fox*, C.J. *and Ormond*, J.) VELLATAPPA PILLAI *v.* MAUNG PO HMYIN. **39 I.C. 125.**

——S. 109—*Tenancy.*

In a suit for possession, where the defendant admits tenancy but resists the suit on the ground of subsequent sale in his favour, the

EVIDENCE ACT (I of 1872), S. 110.

burden of proving the sale, is shifted on to him to rebut the presumption that he is still a tenant. (*Saunders*, A J.C.) MI KYEN ME *v.* MI EIN CHON. **33 I.C. 600 = 8 Bur. L.T. 292.**

——S. 110—*Possession – Cantonment area.*

Possession of property in cantonment area is not *prima facie* evidence of title in fee simple. (*Lord Robinson.*) KAIKHUSRU ADERJI *v.* SECRETARY OF STATE FOR INDIA. **36 Bom. 1 = 12 I.C. 117 = 38 I.A. 201 = 15 C.W.N. 909 = 10 M.L.T. 97 = (1911) 2 M.W.N. 23 = 14 C.L.J. 268 = 13 Bom.L.R. 788 = 8 A.L.J. 1219 = 21 M.L.J. 1100 (P.C.).**

——S. 110—*Jungle land — Possession—Title.*

Possession of jungle lands must be presumed to have been all long with the party who has title to them until dispossession within the statutory period. (*Mr. Ameer Ali.*) JAGADINDRA NATH *v.* HEMANTA KUMARI DEBI. **15 C.W.N. 887 = 11 I.C. 542 = (1911) 2 M.W.N. 101 = 10 M.L.T. 157 = 13 Bom.L.R. 806 = 14 C.L.J. 319 = 8 A.L.J. 1176 (P.C.).**

——S. 110—*Converse not true.*

The presumption that plaintiff having the title also has possession, can properly be made, in the case of jungle or waste land where there is no proof or very little proof of acts of ownership having been exercised on either side, or where the evidence as to such act or such ownership is very nearly equal. Though S. 110 of the Evidence Act recognises a presumption that the person in possession also has a good title there is no corresponding section saying that the person with the title should be presumed to be in possession. This presumption is one that can only come under S. 114 of the Evidence Act which allows the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events &c. (*Marten and Fawcett*, JJ.) KASHI NATH *v.* GANESH. **1923 Bom. 361.**

——S. 110—*Evidence equally balanced—Possession goes with title.*

Where there is strong evidence of possession on the part of A opposed by evidence apparently strong also on the part of his opponent B, in estimating the weight due to the evidence on both sides, the presumption may well be regarded that possession went with title. (*Mookerjee and Chotzner*, JJ.) PROMODE KUMAR ROY *v.* MADAN MOHAN SAHA. **36 C.L.J 396. 27 C.W.N. 305 = 1923 Cal. 228.**

——S. 110—*Suit by benamidar.*

Where in a suit for possession of land in possession of the defendant he claims to be the owner and the plaintiff his benamidar, the plaintiff must prove that defendant is not the owner. (*Chatterjee and Newbould*, JJ.) LAL MAHMUD *v.* AYEJUDDI SHEIKH. **57 I.C. 972.**

EVIDENCE ACT (I of 1872), S. 110.

——S. 110—*Presumption—Person in possession.*

In a suit for possession when the boundaries are in dispute if the defendant is in actual possession of the land sued for, the burden of proof will be on plaintiff to establish his title. (*Richardson and Walmsley*, JJ.) MANINDRA CHANDRA NANDI *v.* SARABINDU RAI. **27 C.L.J 599 = 45 I.C. 408 = 28 C.W.N. 593.**

——S. 110—*Presumption — Evidence of possession unreliable.*

Where evidence of possession is equally strong on both sides and apparently equally balanced, preference should be given to the evidence on the side of the party with whom title is found, But where the evidence is equally unworthy of reliance on both sides, no presumption can be made. 20 W R. 25, Foll. (*Holmwood and Mullick*, JJ.) LAL SINGH *v.* MIR LATIFF HUSSAIN. **28 I.C. 477 = 21 C.L.J. 480.**

——S. 110—*Suit by Benamidar.*

In a suit for possession by Benamidar plaintiff, he must prove that he is not a Benamidar. (*Mullick*, J.) JAGAT JARA DEBYA *v.* NARENDRA KANTA BANERJEE. **24 I.C. 801.**

——S. 110—*Possession—Waste land.*

Where the land in dispute is waste and covers a very small area, the possession may be presumed to follow the title. (*Mookerjee and Beachcroft*, JJ.) BHAGWAN CHANDRA DEY *v.* DAYAL DARI DAS. **16 I.C. 623.**

——S. 110—*Forest land — Possession—Determining title.*

In the absence of any proof of exercise of ownership it can not be said that the plaintiffs have established their right to lands which are shown to have been claimed by and in possession of the defendants. (*Wallis*, C J. *and Tyabji*, J.) MANJERI KARNAMUL PAD *v.* KOZHIKOTE KIZHAKKE. **29 I.C. 729.**

——S. 110—*Possession — Presumption of title.*

Lawful possession however short is presumptive evidence of title as owner and of the title to possession. (*Miller and Sadasiva Aiyar*, JJ.) GANAPATHI MUDALI *v.* VENKATALAKSHMINARASAYYA. **25 I.C. 109 = (1914) M.W.N. 728.**

——S. 110—*Custom prohibiting sale.*

Burden of proof lies on the person alleging the custom that vendor has no right to transfer the land. (*Macnair*, A.J.C.) SAHEBRAO *v.* JAIWANT RAO. **58 I.C. 192**

——S. 110—*Person in possession—Title—Presumption.*

Where nothing else is known, the person in possession is presumed to be the owner. (*Stanyon*, A.J.C.) RAGOBA *v.* PALHOBA. **46 I.C. 217.**

EVIDENCE ACT (Iof 1872), S. 110.

——S. 110—*Possession, presumption of.*

When in a suit relating to land, the plaintiff's title and possession within the limitation is challenged, and he establishes his title by a purchase, he is presumed to be in possession up to the time of suit. (*Lindsay*, J.C.) JANKI SARAN *v.* WIDOW OF MAHOMED SADIG.
7 O.L.J. 238=56 I.C. 720=2 U.P.L.R. (J.C.) 106.

——S. 110—*Possession—Following title—Presumption—Trespasser.*

Proof of possession varies with the nature of the property in respect of which possession is questioned. If mere possession in fact is undetermined, possession in law follows the right to possess, in other words possession follows title. No presumption of possession can be raised in favour of a trespasser. (*Lindsay*, J.C.) BRIJRAJ SINGH *v.* GANGA BAKSH SINGH. **2 O.L.J. 346=28 I.C. 855=18 O.C. 43.**

——S. 110 — *Presumption — Possession follows title.*

The ordinary presumption is that possession goes with title. That presumption of course does not avail if there is clear evidence to the contrary. Where there is no evidence of possession on either side or where the evidence is unsatisfactory on both sides the presumption will prevail. (*Atkinson and Jwala Prasad*, JJ.) BHIKHAO BHUNJAN NARAIN TEWARI *v.* UPENDRANATH ROY. **4 P.L.J. 453=51 I.C. 801=1919 Pat. 298.**

——S. 110—*Burden of proof—Onus.*

Juridical possession is enough to shift the onus of proof on the other side. The section can be relied upon in a suit for ejectment, though the person dispossessed did not bring a suit under S. 9, Specific Relief Act within the time limited by law. (*Mullick and Atkinson*, JJ.) HARADHAN MANDAL MODAK *v.* ISWAR DAS MARWARI. **2 P.L.J. 61=38 I.C. 797=3 P.L.W. 258.**

——S. 110—*Person in possession—Ouster.*

Person already in possession of property can be ousted only by a person who can prove a better title in him. (*Mullick and Jwala Prasad*, JJ.) KHAIRUDDIN *v.* SAHDEO NARAIN SINGH. **38 I.C. 483=1 P.L.W. 319.**

——S. 110 — *Ownership—Person in possession.*

The burden of proving that a person in possession is not the owner, lies in the person asserting it. (*Twomey*, J.) MA KYIN *v.* RAM PERSHAD. **21 I.C. 333=6 Bur L.T. 185.**

——S. 110—*Onus on the party out of possession—Shifting of onus.*

The defendant was sued in ejectment from a house, which had been in his possession for five years without interruption on the ground that he first entered the premises temporarily with the permission of the plaintiff's father; the defendant in reply alleged a sale. *Held*, that the plaintiff must prove permissive occupation and the burden of proof should not be shifted unless the plaintiff had made out a *prima facie* case. (*Twomey*, J.) MI MYIT *v.* U. CHAING. **11 I.C. 777=4 Bur L.T. 159.**

EVIDENCE ACT (I of 1872), S. 111.

——S. 110—*Onus of proof.*

A Probate Court granted Probate to A deciding that she was the widow of the deceased. B brought a suit for possession of the property, alleging that she was the adopted daughter of the deceased and that A was nobody. *Held*, that B must prove that A was not a widow of the deceased under S. 110. (*Mc Coll*, J.C.) MI MGWE ZAH *v.* MI SHWE TAIK. **10 I.C. 987=(1910) 1 U.B.R. 61.**

——S. 110—*Mortgage by conditional sale or sale with covenant to repurchase.*

The burden of proof is on the plaintiff to prove a covenant to repurchase or that the deed is a mortgage by conditional sale. (*Twomey*, J.) MAUNG PYA *v.* MAUNG OZA. **9 I.C. 770=4 Bur. L.T. 40.**

——S 110—*Waste land—Possession, when evidence of title.*

In case of waste lands, the Court would seize upon the slightest evidence of occupation for proof of title, but the occupation or the acts of user must be such as to indicate the intention to hold for oneself, for without such intent there is no possession. (*Pratt*, J.C., *and Crouch*, A.J.C.) SULTAN MUHAMMAD *v.* SECRETARY OF STATE. **29 I.C. 51=8 S.L.R. 331.**

——S. 110—*Ownership—Presumption.*

Under the section, possession short of the statutory period which may give a title by prescription, is sufficient to raise a presumption of ownership and shift the burden of proof of title on the other party; when neither side can show title, the possession which attracts the presumption of ownership must be a possession founded on a *prima facie* right. Even if mere wrongful possession is taken to be sufficient to shift the burden of proof, circumstances may show that such wrongful possession was merely that of a licensee and not of an owner. (*Pratt*, J.C. *and Fawcett*, A.J.C.) FAKIR SHAH BALDIN *v.* SECRETARY OF STATE. **19 I.C. 565=6 S.L.R. 210.**

——S. 111.

See also—(1) CONTRACT ACT, S. 16.
(2) PARDANASHIN LADY.

——S. 111—*Pardanashin lady—Gift by lady left on mercy of donee—Burden of proof of validity of gift.*

Where a Muslim lady gifted away all her property leaving herself for the future at the mercy of the donee, the burden is on the latter to show that she understood the nature of the transaction. (*Richards*, C.J. *and Banerji*, J.) MAQBUL HUSAIN *v.* GHAFURUNISSA. **36 All. 333=24 I.C. 34=12 A.L.J. 452.**

EVIDENCE ACT (I of 1872), S. 111.

———S 111—Pardanashin *lady—Burden of proof—Plea of undue influence to set aside a deed.*

Where the plaintiff is a *Pardanashin* Lady seeking to set aside a document as being wrought from her by undue influence, the burden of proving that undue influence was not exercised is on the defendants. (*Scott-Smith and Broadway*, JJ.) MUHAMMAD IBRAHIM *v.* UMALULLAH JAN.

72 P.W.R. 1917=39 I.C. 798=90 P.R. 1917.

———S 111—*Contract Act, S.* 19—*Registration—Effect of.*

Where a person signs a deed and it is registered, the burden of proving existence of fraud or misrepresentation lies on him. (*Mullick and Jwala Prasad*, JJ.) MAHABIR PRASAD *v.* BIBI NAGIN. **39 I.C. 500=1 P.L.W. 466.**

———S. 111—*Position of active confidence.*

Where the affairs of an inexperienced young man who has just come into possession of the property are being managed by an experienced Muktear, the latter stands in a position of active confidence. (*Batten*, A.J.C.) SURAT SINGH *v.* BALDEO. **17 I.C. 363=8 N.L.R. 150.**

———S. 111—*Contract Act, S.* 16—*Undue influence.*

Where a transaction entered into under undue influence appears to be unconscionable, the person who is in a position to dominate the will of another, must prove the want of undue influence. (*Kanhaiya Lal and Kendall*, A.J.Cs.) MAHABIR PRASAD SINGH *v.* LALJAGDISH BAHADUR SINGH. **38 I.C. 471=3 O.L.J. 762.**

——S. 112—*Presumption — Parentage—Marriage.*

Where plaintiff claims to recover property as the son of B by his lawfully married wife D and delt, denies that D ever gave birth to a child, and sets up that plff. is the son of one S, the onus of proof is on plaintiff to show that D gave birth to him or to any child before invoking the presumption under S. 112. 25 A. 403, Ref. (*Mears*, C.J. *and Banerji*, J.) RAO NARSINGH RAO *v.* BETI MAHA LAKSHMI BAI.

44 A. 470=20 A.L.J. 274=L.R. 3 A. 235=1922 All. 214.

——S. 112—*Presumption as to legitimacy.*

Where two persons live together as husband and wife, any one alleging that a child born to such persons is illegitimate must prove t. But the onus is shifted by the admission that the woman was the wife of another person and was turned out by him on account of adultery. (*Richards*, C J. *and Banerji*, J.) PANCHAM *v.* HAZARI. **19 I C. 634.**

———S. 112—*Legitimacy—Presumption.*

Presumption of legitimacy of a person born in lawful wedlock is conclusive unless rebutted by cogent proof of non-access. 29 I.A. 17=10 I.C. 389, Ref. (*Shadi Lal and Broadway*, JJ.) BHAGAWANT SINGH *v.* NIRANJAN SINGH. **39 I.C. 29=56 P.W.R. 1917.**

EVIDENCE ACT (I of 1872), S. 112.

———S. 112—*Legitimacy.*

When a boy was born about seven months after his father and mother were married and it was not disputed that they had opportunity of access at a time when he could have been begotten by them, *Held*, that the boy was the legitimate son of his parents. (*Rattigan and Scott-Smith*, JJ.) MAHBUB ALI *v.* TAJ KHAN.

26 I.C. 969=255 P.W.R. 1915.

———S. 112—*Illegitimacy, if can be proved from litigation for custody of wife—Conclusive proof of non-access necessary to establish illegitimacy.*

Illegitimacy could not be positively inferred from a mere litigation for custody of wife when the child is born shortly thereafter; in order to establish the illegitimacy of a person born during the subsistence of a valid marriage between his mother and any man, it should be conclusively shown that the parties to the marriage had no access to each other at any time when he could have been born. (*Rattigan and Beadon*, JJ.) DALIPA *v.* RALA.

49 P.L.R. 1914=22 I.C. 409=137 P.W.R. 1914.

———S. 112—*Presumption of legitimacy.*

It cannot be assumed that in India it is impossible for a man of 70 years of age to beget children. (*Rattigan and Beadon*, JJ.) UTTAM DAS *v.* OHANAN DAS.

51 P.R. 1913=283 P.L.R. 1913=20 I.C. 462=200 P.W.R. 1913.

———S. 112—*Proof of legitimacy—Period of gestation.*

In the absence of inherent impossibility of gestation of 330—333 days, a child born within that period from the last access of a husband is legitimate. So the mere circumstance of a child's birth within that period from the last access of the husband is insufficient to charge the wife of the offence of adultery if there is no other proof to support it. (*Reid*, C.J., *Rattigan and Chevis*, JJ.) **77 P.R. 1911=12 I.C. 946=260 P.W.R. 1911.**

——S. 112—*Legitimacy—Presumption—Prostitute—Coquette girl.*

To rebut the presumption of a child's legitimacy, there must be strong, distinct, satisfactory and conclusive evidence that the husband before or after marriage had not access to his wife. A coquette or a first is not necessarily a prostitute. (*Wallis*, C.J., *Ayling and Sadasiva Aiyar*, JJ.) GUDA WILLIAM *v.* GUDA KARUNAMMA. **29 M L J. 269=29 I.C. 178=17 M.L.T. 357 (F.B.).**

———S. 112—*Date of conception.*

S. 112 refers only to a presumption of legitimacy and has no reference to date of conception. If the son wants to rely on the defence that he was conceived before the date of an alienation by the father he must prove it

EVIDENCE ACT (I of 1872), S. 112.

by clear and satisfactory evidence. (*Wallis, Offg.* C.J. *and Hannay*, J.) DATLA VENKATASUBBA RAJU GARU *v.* GATTEM VENKATARAYUDU. **27 M.L.J. 560=26 I.C. 61=16 M.L.T. 508.**

——S. 112—*Birth* 11 *months after cessation of marital intercourse.*

If a child is born 11 months after the marital intercourse between the parents had ceased, it is illegitimate. (*White*, C.J., *Ayling and Oldfield*, JJ.) JOHN HOWE *v.* CHARLOTTE HOWE. **38 Mad. 466=(1913) M.W.N. 983=28 M.L.J. 594=21 I.C. 645=14 M.L.T. 447.**

——S. 112—*Proof of non-access—Father disowning son—Onus on father.*

In a suit for partition, B disowned his son A, alleging that A's mother was living apart from him and that he had no access to her. It was proved that there were counter-suits for maintenance and restitution of conjugal rights and that there was a subsequent reconciliation and acknowledgment of legitimacy. *Held*, that the onus of proving non-access lay on the father B. (*Benson and Sundara Aiyar*, JJ.) VENKAYYA *v.* CHIGRUPATI PEDDA NAGANNA. **10 I.C. 389=(1911) 1 M.W.N. 312.**

——S. 112—*Legitimacy—Presumption.*

Before a presumption of legitimacy can arise under S. 112 of the Evidence Act, all the facts specified in the section must be proved. (*Hallifax*, A.J.C.) MAROTI *v.* BHAGI. **68 I.C. 465.**

——S. 112—*Mahomedan Law—Legitimacy—Presumption.*

A child begotten by *zina* cannot be made legitimate by the subsequent marriage of its parents before its birth, and S. 112 of the Act is inapplicable to Mahomedans. (*Stanyon*, A.J.C.) ZAKIRALI *v.* SOGRABI. **43 I.C. 883=15 N.L.R. 1.**

——S. 112—*Legitimacy — Presumption—Rule as to, if supersedes the Muhammadan Law on the subject.*

The rule as to legitimacy contained in S. 112 of the Evidence Act is a rule of procedure and not of substantive law and as such applicable to Muhammadans. (*Daniels*, J.) HAJIRA KHUTAN *v* AMINA KHUTAN. **73 I.C. 983.**

——Ss 112 and 114—*Legitimacy—General presumption*

Where a party admits the paternity of the other party but pleads that he is of illegitimate descent, the legal presumption being in favour of legitimacy, the onus lies on the party alleging illegitimacy to prove it. (*Lindsay*, J.C.) DULAREY SINGH *v.* SURAJ BALI SINGH. **43 I.C. 478=4 O.L.J. 816.**

——S. 112—*Birth within* 230 *days.*

A child born within 230 days of its father's death, the mother not having remarried in the interval, is presumed to be the legitimate child

EVIDENCE ACT (I of 1872), S. 114.

of the deceased and the onus of proving that the deceased had no access to his wife at or about the time when the child could have been begotten, is on the person who alleges it. (*Kanhaiya Lal and Kendall*, A.J.Cs.) JAGJIWAN BAKHSH SINGH *v.* PATRAJ KUAR, **38 I.C. 449=3 O.L.J. 741.**

——S. 112—*Presumption as to legitimacy and marriage—Burden of proof.*

There is a legal presumption in favour of legitimacy and marriage and the burden of proving illegitimacy is on the person interested in making it out. (*Lindsay*, J.C.) APARHAL SINGH *v.* NARAPAT SINGH. **23 I.C. 972=1 O.L.J. 89.**

——S. 112—*Paternity of child — Law applicable.*

Where the question of paternity, is one of evidence only, the case is governed by S. 112 of the Act and not by the personal law of the parties. The presumption of legitimacy created by S. 112 can be rebutted only by proof of non-access leaving no room for doubt. If the husband has had access, the wife's adultery will not justify a finding of illegitimacy. Proof of impotence would be equivalent to proof of non-access. (*Shaw*, J.C.) NGA TUN *v.* Mr. CHON. **16 Cr. L.J. 84=26 I.C. 996=(1914) II U.B.R. 23.**

——S. 114.

APPLICABILITY.
BUDDHIST LAW.
COMPLIANCE WITH THE LAW.
CONFLICT OF PRESUMPTION.
CONSIDERATION.
CORROBORATION.
COURSE OF NATURAL EVENTS.
CRIMINAL TRIAL.
DATE OF BIRTH.
DATE OF EXECUTION DEED.
DEATH, ORDER OF.
DEPOSIT.
DISCHARGE.
EXECUTION OF WILL, KNOWLEDGE OF CONTENTS.
GRANT.
HANDWRITING.
HUMAN CONDUCT.
KNOWLEDGE OF LAW.
LANDLORD AND TENANT.
LEGITIMACY.
LIQUOR, POSSESSION OF FULL BOTTLES OF WINE.
LOST GRANT, EASEMENT.
MARRIAGE.
NOTICE.
OWNERSHIP OF WILL.
PARTITION.
PERMANENT SETTLEMENT.
PERMANENT TENANCY.
SILENCE.
SCOPE OF.
TRUSTS.
VALUE OF PRESUMPTION.
WILL, PARSIS.

EVIDENCE ACT (I of 1872), S. 114—Applicability.

Applicability.

——— S. 114—*Applicability—Price fixed in agreement to sell—Presumption as to quantity of estate.*

The normal presumption that in fixing the property in an agreement of sale, regard was had on both sides to the quantity which both proposed the estate to consist of, yet there may be considerations which may rebut or waken the presumption. (*Mr. Ameer Ali,*) HUSSONALLY SULLEMANJI *v.* TRIBHUVANADAS MANGAL DAS. (1920) M.W.N. 726=25 C.W.N. 385=61 I.C. 361=3 U.P.L.R. (P.C.) (1) (P.C.)

——— S. 114—*Applicability — Ambiguous special covenant—Mortgage.*

Where a deed of further charge provided that there were two bonds by which plots were mortgaged and that as the money due under the deed of further charge, was not paid, those two bonds shall not be redeemed, and where there was nothing to show as to what the bonds referred to in the deed of further charge or that they referred to the bonds in suit, *held*, that it could not be presumed that is referred to the deeds in suit; and that it was for the defendants who were setting up a special covenant, to prove it. (*Daniels*, A.J.C.) BHUP SINGH *v.* LAZIM SINGH. 65 I.C. 121 (2)=24 O.C. 319.

——— S. 114—*Applicability — Cases analogous.*

The principle laid down in the section is of wide application and covers other cases analogous to those given in the illustrations to the section. (*Rafique and Piggott*, A.J.Cs.) RUSTOM SINGH *v.* EMPEROR. 24 I.C. 146=15 Cr. L.J. 440=1 O.L.J. 95.

——— S. 114—*Applicability — Property—Undivided — Exclusive possession for a long time.*

There is no presumption that the property left by a person long deceased is part of an undivided estate. It may require much, or very little evidence to sufficiently prove that the property is undivided, but when land has been in exclusive possession of others for a long period, the person asserting that it forms part of an undivided estate, should be required to prove the fact. (*Maung Kin*, J.) MAUNG PO *v.* MAUNG PO THIN. 33 I.C. 985=9 Bur. L.T. 164.

Buddhist Law.

——— S. 114—*Buddhist Law—Adultery.*

A Court may safely presume adultery if a guilty attachment is found to subsist between the parties and that opportunities had occurred when a guilty intercourse might with facility have taken place. (*Maung Kin*, J.) MAUNG PYA GYA *v.* MAUNG PO KA. 33 I.C. 118=9 Bur. L.T. 74.

EVIDENCE ACT (I of 1872), S. 114—Compliance with the law.

Compliance with the law.

——— S. 114—*Compliance with law.*

Under S. 114, ill. (*e*) and (*f*) of the Evidence Act the Court is entitled to presume that the accounts in the Collector's Office are correctly kept. (*Lord Phillimore.*) MAHOMAD SULAIMAN *v.* BIRANDRA CHANDRA. 50 C. 243=44 M.L.J. 388=32 M.L.T. 115=27 C.W.N. 749=37 C.L.J. 531=1922 (P.C.) 405.

——— S. 114—*Compliance with the law.*

In the absence of evidence to the contrary, the presumption is that the law was complied with. 5 I.C. 664, Dist; A.W.N. (1906) 194, Rel. (*Knox*, C.J., *Banerji and Tudball*, JJ.) SARUP LAL *v.* LALA. 39 All. 707=42 I.C. 589=15 A.L.J. 757 (F.B.).

——— S. 114—*Compliance with law—Regularity of judicial and official acts—Sheristadar of Court signing process by order.*

Where the sheristadar of a Court signed a warrant of attachment of moveable property in execution of a decree and the sheristadar signed "by order" of the Court, *Held*, that the presumption in S. 114, Ill. (*e*) of the Evidence Act applied to the case and that, in the absence of anything to the contrary, it could be presumed that he was the officer to sign the warrant as required by O. 21, R. 24 (2) C.P. Code. (*Newbould and Suhrawardy*, JJ.) GIRDHAR SARKAR *v.* HARISHCHANDRA CHOWDHURY. 37 C.L.J. 331=27 C.W.N. 1042=24 Cr.L.J. 584=1923 Cal. 584.

——— S. 114—*Compliance with Laws—Judgment silent on point raised in the memo of appeal—Presumption.*

Where an appellate judgment is silent on a point which is specifically mentioned in the grounds of appeal, the inference can be drawn that it was given up. To hold otherwise would be to contravene S. 114, and to presume that the Court failed to do its duty. (*Abdul Raoof and Harrison*, JJ.) ABDUL KARIM *v.* THAKAR RAM JAGGU RAM. 1923 Lah. 124.

——— S. 114—*Compliance with Law—Identification parade—Presumption of regularity of.*

The presumption under S. 114 of the Evidence Act is hardly sufficient to satisfy a Court that such precautions have been taken as to render an identification truly valuable. (*Harrison*, J.) KALLU *v.* EMPEROR. 4 Lah. L.J. 448=23 Cr. L.J. 449=4 U.P.L.R. (Lah.) 93=1922 Lah 31.

——— S. 114—*Compliance with law—Exercise of powers of revision by Board of Revenue—Reasons not given—Presumption of lawful exercise of powers.*

The Court can presume that the Revenue Board has exercised lawful powers in revision. (*Ayling and Odgers*, JJ.) SRINIVASA RAO *v.* RANGASAMY. 18 L.W. 523=1924 Mad. 326.

EVIDENCE ACT (I of 1872), S. 114—Compliance with the law.

———S. 114—*Compliance with Law—Legal title—Possession—Alleging possession as trespasser.*

Where possession can be referred to a lawful origin the presumption is that it was acquired lawfully and the burden of proving the contrary is on the party who alleges it, *e.g*, the burden would be on the party who alleges that he held the property as trespasser where he ought to hold as legatee or heir. (*Daniels and Lyle*, A.J.Cs.) KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. 1922 Oudh. 231.

———S. 114 — *Compliance with Law—Official acts—Presumption—Objection to jurisdiction.*

The presumption is that official acts are legally performed and where the jurisdiction of a settlement officer has not been questioned in the trial Court, it must be presumed that he acted regularly and within his jurisdiction. (*Coutts and Ross*, JJ.) BABU BALGOBIND *v.* RAI BEHARI LAL. 1923 Pat. 114 = 3 P.L.T. 617 = 1923 P. 96 (2).

———S. 114—*Compliance with Law—Presumption of accuracy of survey records.*

The presumption in favour of survey records of rights cannot be displaced by Batwara or irrigation maps. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. 1923 P. 37.

———S. 114, *Compliance with Law—Official acts done correctly.*

Whereas a Court may presume official acts as *regularly* performed, it cannot presume that they were *correctly* done The identity of persons alleged to have made certain admissions in *butwara* proceedings cannot be presumed but must be proved by the person relying on those admissions. Though *butwara* papers are admissible, the Court has to decide in each case whether it would rebut the presumption of the correctness of the Record-of-Rights. (*Das and Adami*, JJ.) JAGDEO *v.* BULAKI. 1921 Pat. 343 = 63 I.C. 226 = 2 P.L.T. 343.

Conflict of Presumption.

———S. 114—*Conflict of presumptions.*

Where there are two presumptions and both are equally balanced, the Court must prefer that which best accords with facts. (*Scott*, C. J. *and Chandavarkar*, J.) SHRINIVAS *v.* BALWANT VENKATESH. 37 Bom. 513 = 20 I C. 162 = 15 Bom. L R. 533.

———S. 114—*Conflict of presumption—Important witness not called—How to be avoided.*

Per *Buckland*, J.—If a party wishes not to have a presumption raised against him by the fact that an important witness had not been called, he should exhaust to the utmost of his power every means to bring that witness before the Court. (*Mookerjee and Buckland*, JJ.) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & CO. 49 Cal. 345 = 35 C.L.J. 175. 1922 Mad. 415.

EVIDENCE ACT (I of 1872), Ss. 114—Corrobaration.

Consideration.

———S. 114—*Consideration — Presumption—Endowment.*

An endorsement of satisfaction of a mortgage-deed need not necessarily import receipt of consideration, since the English method of prooedure by deed, on the principle that a deed imported consideration, has no application in India. (*Scott*, C.J. *and Batchelor*, J.) BAI JAYAGAVARI *v.* PURSHOTAMDAS SUNDER LAL. 44 I.C. 926 = 20 Bom. L.R. 77.

Corroboration.

——— S. 114—*Corroboration—Unnecessary.*

Where the law provides that a presumption arises under certain circumstances, that presumption must arise independently of whether there is any corroboration or no. (*Newbould*, J.) CHANDRA KISHORE HADI *v.* SHEIKH KUDRAT. 52 I.C. 480.

———S. 114—*Corroboration.*

The accused was charged with dacoity. The approver himself at first stated most definitely that he did not recognise the accused as being one of the party concerned in the dacoity. He subsequently retracted from this statement and declared that he did recognize him; but that was only after he had been pressed by the prosecution: *Held*, the statement first made should be accepted. Where the only corroboration was the recovery of certain articles, alleged to be some of the articles stolen and subsequently produced from the house of the accused, his house was searched in his absence and he was given no opportunity of checking the results of the search or giving any explanation as to how the articles came into that house, and there was no evidence as to where the respective ornaments were found, nor was any thing said as to who produced them: *Held* that there was no sufficient corroboration, (*Fforde*, J.) SAUDAGAR SINGH *v.* EMPEROR. 5 L.L.J. 572 = 1923 Lah. 683.

———S. 114—*Corroboration.*

Without material corroboration there should be no conviction, when accused can explain the presence of the articles found with them. (*Broadway*, J.) SULEMAN *v.* EMPEROR. 1923 Lah. 385.

———Ss. 114 and 133 — *Corroboration — Accomplice—Evidence of.*

S. 133 of the Evidence Act contains the rule of law regarding the testimony of accomplices and S. 114, Illn. (*b*) is merely a guide to assist the Court though in a vast majority of cases, prudence requires that there should be coroboration. No hard and fast rule can be laid down to regulate the extent and nature of the corroboration, this being dependant entirely on the circumstances of the case. (*Scott-Smith and Broadway*, JJ.) NARAIN DAS *v.* EMPEROR. 3 Lah. 144 = 4 L.L.J. 91 = 23 Cr. L.J. 513 = 9 P.W.R. (1922) Cr. = 1922 Lah. 1.

EVIDENCE ACT (I of 1872), S. 114—Corroboration.

———S. 114—*Corroboration—Accomplice.*

The evidence of the accomplice was held to be sufficiently corroborated by the discovery of blood marks on the person and in the house of the accused as well as his suspicious conduct immediately after the murder. (*Sir Shadi Lal*, C.J. *and Moti Sagar*, J.) GHULAM HUSSAIN *v.* EMPEROR. **4 Lah. L J. 405.**

———S. 114—*Corroboration—Accomplice—Testimony of—Weight due to—Presumption.*

An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons but the uncorroborated statement of an approver taken at the end of the trial is of very little evidentiary value. (*Shadi Lal*, C.J. *and Wilberforce*, J.) SUNDER SINGH *v.* EMPEROR. **66 I.C. 187 = 4 Lah. L.J. 284.**

———S. 114—*Corroboration—Accomplice—Evidence—Several statements implicating same persons.*

In cases where a large number of persons have been arrested by the police and confessions are obtained one after the other, it is likely enough that those confessions should agree. Each man would be likely to name as far as possible those persons who have already been named in the previous confessions. It may, of course, be said that when a man confesses, he does not necessarily know the details of the previous confession made by another accused, but it does not necessarily follow that he should be unable to ascertain what persons have been implicated in the previous confessions, from the subordinate police officers concerned with the investigation of the case. Consequently the fact of any particular person having been named in the confession of more than one of the co-accused is not a sufficiently reliable corroboration of the statement of the approver. (*Chevis*, J.) LALA *v.* EMPEROR. **23 Cr. L.J. 158 = 65 I.C. 622 = 3 P.W.R. (1922) Cr.**

———S. 114—*Corroboration — Approver's evidence.*

To support a conviction on the statement of an approver especially of one whose initial statement was very long delayed, the statement requires material corroboration connecting each individual accused with the crime committed. (*Harrison*, J.) SARDARA *v.* EMPEROR. **63 I.C. 612 = 22 Cr. L.J. 676.**

———S. 114—*Corroboration—Bribe giver—What amounts to.*

The merits of the case to decide which in favour of the bride-giver, a Judge accepts the illegal gratification, are a sufficient corroboration of the former who is really an accomplice. (*Rattigan*, C.J.) HARSUK ROY *v.* EMPEROR. **3 P.W.R. Cr. 1919.**

———S. 114—*Corroboration—Testimony of accomplice—English and Indian Law.*

EVIDENCE ACT (I of 1872), S. 114—Course of Natural Events.

The law in this country regarding corroboration of an accomplice's evidence does not differ from the English law. Corroboration need not be required in every detail of the crime, otherwise the testimony of the accomplice would not be essential to the case but would be merely confirmatory of other and independent testimony. The corroboration must be by some evidence other than that of an accomplice and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice. Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. The nature of the corroboration necessarily varies according to the particular circumstances of the offence charged. It would be dangerous to formulate the kind of evidence which would be regarded as corroborative except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused. Corroborative evidence need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. (*Kotwal*, A.J.C.) KISHAN RAGHUJI CHARAN *v.* EMPEROR. **23 Cr. L J. 391 = 1922 Nag. 172.**

Course of Natural Events.

———S. 114—*Course of natural events—Continuance of existing state of things.*

Proof of the existence at a particular time of a fact of a continuous nature gives rise to a rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant, must obviously vary with each case—always strongest in the beginning, the inference steadily diminishes in force with the lapse of time at a rate proportionate to the quality of permanence belonging to the fact in question, until it ceases or perhaps is supplanted by a directly opposite inference. To put the matter shortly, it will be inferred that a given set of facts or set of facts whose existence at a particular time is once established in evidence, continues to exist as long as such facts usually exist. The inference of continuance, whether backwards or forwards, whether upwards or downwards, is an inference of fact and may therefore be rebutted. (*Mookerjee and Cuming*, JJ.) SECRETARY OF STATE FOR INDIA *v.* UPENDRA NARAIN ROY. **35 C.L.J. 336 = 1923 Cal. 247.**

———S. 114—*Course of natural events.*

An inference of approbation of a book of an objectionable character by persons having access to the library of an individual or association,

EVIDENCE ACT (I of 1872), S.114—Criminal Trial.

possessing it, is not necessarily justifiable. (*Harrington, Mookerjee and Caspersz*, JJ.) PULIN BEHARI *v.* EMPEROR,
16 C.L.J. 517 = 13 Cr. L.J. 609 = 16 I.C. 257 = 16 C.W.N. 1105.

Criminal Trial,

——S 114—*Criminal trial—Non-production of papers by Crown—Adverse inference.*

Where documents relevant to the case are withheld by the Crown, the Court will be justified in drawing an adverse inference against the Crown. (*Mookerjee and Cuming*, JJ.) SECRETARY OF STATE *v.* UPENDRA NARAIN ROY. **36 C.L J. 336 = 1923 Cal. 247.**

——S. 114—*Criminal trial—Non-production of material evidence.*

Where the Crown withholds relevant documents in its possession, the Court will draw an inference adverse to it. 40 M. 402, Ref. (*Mookerjee and Chotzner*, JJ.) RAJA SREENATH ROY *v.* SECRETARY OF STATE FOR INDIA. **50 Cal. 276 = 36 C L.J. 345 = 1923 Cal. 233.**

——S. 114—*Criminal trial—Absconding accused—Presumption.*

No presumption as to guilt can be raised from the fact that the accused has absconded. (*Rattigan and Beadon*, JJ.) FATTA *v.* EMPEROR. **31 P.W.R. 1913 = 21 I.C. 473 = 14 Cr. L J. 601 = 314 P.L.R. 19**

——S. 114—*Criminal trial—Failure to call all witnesses.*

If the police consider a witness to be a false witness or his evidence is unnecessary, they would be justified in not sending up that witness as a witness for the prosecution and his absence at the trial ought not to be a reason for disbelieving the prosecution witnesses if they are otherwise worthy of credit. It is of course not for the Police or for the prosecutor to champion a particular theory and to suppress the evidence of a reliable witness simply because his testimony is inconsistent with it. If the witnesses called by the prosecution are otherwise worthy of credit, the Court is not entitled to disbelieve them simply because some persons, who could have thrown light upon the case, have not been put before the Court by the prosecution. (*Mullick and Kulwant Sahay*, JJ.) RAMJIT AHIR *v.* EMPEROR. **2 Pat. 309 = 1 P.L.R. 236 (Cr.) = 24 Cr. L J. 801 = 1923 P. 113.**

Date of Birth.

——S. 114—*Date of birth—Knowledge.*

An European may be presumed to know his own birth-day as a matter of course but there is no such presumption in the case of Hindus

EVIDENCE ACT (I of 1872), S. 114—Discharge.

of the *Nattukottai Chetti* class. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY.
(1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.

Date of Execution Deed.

——S. 114—*Date of execution of deed.*

There is a general though not a conclusive presumption that a document was made on the day of the date it bears. (*Sir Lawrence Jenkins.*) MINA KUMAR BIBI *v.* BEJOY SINGH. **44 Cal. 662 = 1 P.L.W. 425 = 5 L.W. 711 = 32 M L.J. 425 = 21 C.W.N. 585 = 21 M.L.T. 344 = 15 A.L.J. 382 = 25 C L J 508 = 19 Bom. L.R. 424 = (1917) M W N. 473 = 40 I.C. 242 = 44 I.A. 172 (P.C.).**

——S. 114—*Date of execution.*

There is a presumption that a document was executed on the date it bears. (*Kanhaiya Lal and Lyle*, A.J. Cs.) LALA PURSHOTAM *v.* NAZIR HUSSAIN. **54 I C. 846 = 6 O.L J. 668.**

Death—Order of.

——S. 114—*Death—Order of.*

Where among some relations the evidence on the question who died first is quite evenly balanced, the Court is entitled to say the probabilities are in favour of the younger man surviving the elder. (*Macleod*, C.J. *and Shah*, J.) KULKARNI *v.* LAKSHMIBAI.
24 Bom. L.R. 836 = 47 B. 37 = 1922 Bom. 347.

——S. 114—*Death—Order of—Presumption.*

The ordinary presumption is that the elder man died first. (*Holmwood and Chapman*, JJ.) GOPALCHANDRA DEB GOSWAMI *v.* PADMAPANI GOSWAMI. **18 I.C. 814.**

Deposit.

——S. 114—*Deposit—Loan.*

Where there is a doubt as to whether a transaction amounts to a loan or a deposit the presumption is that it is a deposit and not a loan. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) NARAYANAN CHETTIAR *v.* VELLAYAPPA CHETTIAR. **(1916) 1 M.W.N. 206 = 34 I.C. 347 = 19 M.L.T. 237.**

Discharge.

——S. 114—*Discharge — Mortgage — Redemption—Proof of.*

The Court is entitled to take into consideration as evidence the fact that on a particular date a particular sum was paid by the mortgagor to the mortgagee and this coupled with the fact that the mortgagor was put into possession of the property and has continued in possession of it, is good evidence upon which the Court might base its finding that the mortgage has been redeemed. (*Ryves*, J.) CHANBEY BASDEO *v.* BEHARILAL. **34 I.C. 117.**

EVIDENCE ACT (I of 1872), S. 114—Discharge.

———S. 114—*Discharge—Delay—Presumption—No demand by mortgagee for 36 years.*

A long delay in making a demand for the money due under a mortgage coupled with other circumstances may throw the onus on the mortgagee of showing that debt was real and existing at the date of the suit. (*Batten and Stanyon*, A.J.Cs.) MEGHRAJ *v.* MUKUNDARAM. **46 I.C. 806.**

———S. 114—*Discharge — Presumption—Mortgage bond not sued on for a long time—Discharge.*

Where an unregistered mortgage bond written by plaintiff's servant who was also the vendor of the stamp and attested only by a cousin and partner of the plaintiff, was not sued on for 30 years. *Held*, the onus is heavily on the plaintiff to prove, not only execution and consideration of the bond but that it was still unpaid. (*Stanyon*, A.J.C.) RAM PRASAD *v.* KISHORI LAL. **43 I C. 657.**

———S. 114—*Discharge—Document creating obligation produced by obligor—Onus of proof—Shifting of.*

Under S. 114 (1) of the Evidence Act it is open to the Court to presume that if a document creating an obligation is in the hands of the obligor, the obligation is discharged. But in raising such a presumption, the Court has to take into regard any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance. (*Kanhaiya Lal*, J.C.) RAM NATH *v.* RAGGHA SAHI.
25 O.C. 125=1922 Oudh 211.

———S. 114—*Discharge—Debt—Absence of demand.*

If a money-lender has allowed a debt to remain outstanding for a very long period without obtaining some document or security for it and without at any time demanding payment, the presumption is that the debt has been paid off. (*Lyle and Ashworth*, A.J.Cs,) NARAIN PRASAD *v* DURGA SINGH.
22 O.C. 335=54 I.C. 95=6 O.L.J. 585.

Execution of will, knowledge of contents.

———S. 114—*Execution of will—Knowledge of contents.*

Mere execution of a will raises a presumption of knowledge and approval of contents on the part of the maker. (*Raltigan*, J.) INDAR NARAIN *v.* ONKAR LAL. **141 P.L.R. 1911= 20 P R. 1912=10 I.C. 130= 233 P.W.R. 1911.**

Grant.

———S. 114 — *Grant — Redemption— Presumption in the case of grant of land.*

Where no evidence that the grant of land for services is on record there the presumption is that it is for past and future services and therefore the land is not resumable. (*Batchelor*, A.C.J. *and Shah*, J.) BALSING APPA *v.* CHANDRAPPA. **25 I C. 860=18 Bom. L.R. 695.**

EVIDENCE ACT (I of 1872), S. 114—Human Conduct.

Handwriting.

———S. 114 — *Handwriting — Will — Improbability of a will entirely written by the testator being forged—Burden of proof.*

There is nothing unnatural in a Hindu, sonless and not in a good state of heath writing a document by which directions are given to a widow to adopt the testator's nephew. It is certainly extremely improbable that a person wishing to put forward a forged will would run the risk of imitating the handwriting of the deceased or get it imitated by some one else when it would be so easy to attack a forged document when it runs over a folio page and purports to have been written by the testator. The plaintiff has to prove the document on which he relies but when once he has gone as far as putting before the Court a *prima facie* case which bears the signs of being genuine, then it is for the defendant to produce reliable grounds for upsetting the plaintiff's case and satisfy the Court that it is not only improbable but impossible. (*Maclcod*, C.J. *and Coyasgee*, J.) IRABASAPPA *v.* BHADRAWA.
1922 Bom. 296.

———S. 114 — *Handwriting — Document writer, if can be assumed to be able to write in different ways.*

It is not safe to presume that a habitual document writer would be inclined or be able to write in different ways or that he could imitate the handwriting of others. (*Sundara Aiyar and Spencer*, JJ.) *In re* BASRUR VENKATA ROW. **36 Mad. 189=11 M.L.T. 93= 22 M L J. 270=14 I.C. 418= 13 Cr. L.J. 226=(1912) M W N. 125.**

Human Conduct.

———S. 114—*Human conduct—Non production of account books.*

From non-production of account books presumption was drawn against the defaulting party. (*Lord Phillimore*). MERLA VENKANNA *v.* MERLA AGASTHIAN.
27 C.W.N. 725=32 M.L.T. 86= 1923 P.C. 31 (P.C.).

———S. 114—*Human conduct — Account books not produced—Effect of—Delay.*

Where plaintiffs who were said to be doing money-lending and pawn-broking business, sued on a pro-note for Rs. 21, 925: *Held* it is inconceivable that they could have carried on money-lending and pawn-broking business without keeping any account books. If they kept account books, they would have been produced if they contained any entries which would support the case of the plaintiffs in any way. If they kept no books of account, their business as money-lenders and pawn-brokers must have been of the very smallest description

VIDENCE ACT (I of 1872), . 114—Human conduct.

and carried on practically without capital. Where a promissory note was alleged to be forged and suits were brought on the last day of limitation: *Held*, if the promissory note had been signed by the defendant, the plaintiff was entitled to delay bringing the suit, until the last day of limitation; but where the plaintiffs had notice that the defendant repudiated their claim, such a repudiation, if made to claim by a respectable and honest money-lender would have resulted in a suit being brought at once. (*Sir John Edge*). DATA RAM JANI *v.* MT. BASANT KUNWAR.
1922 P.C. 378.

———S. 114—*Human conduct — Possession of stolen articles—Presumption.*

If the possession of a stolen article is proved the Court may determine that the person in possession soon after the theft is either guilty of theft or of receiving the goods knowing them to be stolen, unless he can give reasons for his possession. (*Sulaiman*, J.) BHAROS *v.* EMPEROR.
21 A.L.J. 836 = L.R. 4 A. 246 (Cr.) = 1924 All. 192.

———S. 114—*Human conduct--Stolen article —Possession 40 days later—Inference.*

The fact that some 40 days, after a dacoity one of the stolen articles was found in the possession of a person, would not lead to the necessary inference that he took part in the dacoity. (*Ryves*, J.) RAMHIT *v.* EMPEROR.
L.R. 3 A. 50 = 20 A.L.J. 178 = 23 Cr. L.J. 193 = 1922 A. 24.

———S. 114—*Human conduct—Failure to produce original title-deed.*

If the original title-deed of the plff. is not produced in the first Court in a suit for recovery of possession the appellate Court may draw an inference adverse to the plff. (*N. R. Chatterji and Panton*, JJ.) HARENDRA KUMAR ROY CHAUDHURI *v.* DURGACHARAN SAHA.
62 I.C. 697.

———S. 114—*Human conduct — Refusal to do an act — Refusal to attend medical inspection.*

If a person, who is alleged to be suffering from a loathsome disease, refuses to attend medical examination, an inference against him may be drawn. (*Asutosh Mookerji*, A.C.J. *and Choudhuri*, J.) BIRENDRA KUMAR *v.* HEMLATA.
48 Cal. 283 = 24 C.W.N. 914 = 60 I.C. 352 = 33 C.L.J. 87.

———S. 114—*Human conduct—Absence of cross-examination.*

A Court cannot presume that a document is proved simply because the opposing counsel refuses to cross-examine the witness; the counsel can wait until the Court gives a ruling. (*Jenkins*, C.J. *and Woodroffe*, J.) GOPESSWAR DUTT *v.* BISSESSUR DUTT.
39 Cal. 255 = 13 I.C. 577 = 16 C.W.N. 265.

EVIDENCE ACT (I of 1872), S. 114—Knowledge of law.

———S. 114—*Human conduct—Withholding of account books—Presumption.*

Defendants 1 and 2 admitted that one A was their partner in Sambat 1964 but alleged that their partnership ended in that very year. They failed to produce any evidence in support of their assertion. The best proof of this alleged dissolution of partnership would have been their own account books, but they did not produce the same. *Held*, the presumption that arises irresistibly from this withholding of their account books is that the entries therein relating to partnership transactions are contrary to this plea of dissolution. (*Moti Sagar*, J.) THE FIRM JOWALA DAS PARMANAND *v.* UTTAM CHAND.
1923 Lah. 538.

———S. 114—*Human conduct Presumption as to ordinary course of business.*

Where sums are paid before the presiding officer of the Court at the time when a receipt was given for them, the presumption under S. 114 of the Indian Evidence Act is that the ordinary course of business was followed in the case in question. The mere statement by appellant's Counsel that these sums are not always paid at the time when the receipts are given was sufficient to throw the *onus* on the prosecution of proving that the plea was wrong. (*Scott-Smith and Fforde*, JJ.) EMPEROR *v.* AHMED SHAH.
1923 Lah. 566.

———S. 114—*Human conduct — Statement after suit—Value.*

The making of a statement in the document after the suit had been launched and was pending is very different from stating on oath in the witness box and the Court will not attach much weight to the statement even if it is admissible. (*Krishnan and Ramesam*, JJ.) TADEPALLI LAKSHMI NARASIMHAM *v.* RUKMANIAMMA.
1923 Mad. 228.

———S. 114—*Human conduct—Murder for jewels—Possession by accused soon after occurrence—Presumption.*

The possession by the accused of the jewels of a person who has been murdered, if unexplained, is presumptive evidence that the accused was the murderer and the thief. (*Spencer*, J.) *In re* NAINA MALAI KONAN.
69 I.C. 377 = 23 Cr. L.J. 697 = 14 L.W. 418.

———S. 114—*Human conduct — Document not produced—Presumption.*

The Court must presume against a party who suppresses a relevant document. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN.
63 I.C. 625.

Knowledge of law.

———S. 114—*Knowledge of law—Transaction involving statutory obligation.*

A person entering into a transaction involving a statutory obligation must be presumed to have impliedly agreed to submit to that obligation. (*Stanyon*, A.J.C.) KHEMCHAND *v.* MALLOO.
26 I.C. 601 = 10 N.L.R. 81

EVIDENCE ACT (I of 1872), S. 114—Landlord and Tenant.

Landlord and Tenant.

———S. 114—*Landlord and tenant—Rent—Enhanced rate—Payment for long time.*

Where a tenant has been paying enhanced rent for a series of years in respect of garden crops, the Court may presume a contract supported by consideration to pay rent at that rate. (*Wallis*, C.J., *Ayling*, *Coutts-Trotter*, *Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) PERIAKARUPPA MUKKANDAN *v.* RAJA RAJA RAJESWARA SETHUPATHI. **42 Mad. 75 = (1919) M.W.N. 161 = 50 I.C. 616 = 36 M.L.J. 320 (F.B.).**

———S. 114—*Landlord and tenant—Entry in Khewat.*

Entries in Khewat are *prima facie* evidence of possession. Presumption of possession arises where there is no alteration in the entry. (*Hasan*, *A.J.C.*) GULAM SARWAR KHAN *v.* MAHMUD ALI KHAN. **8 O.L.J. 609 = 1922 O. 98.**

Legitimacy.

———S. 114—*Legitimacy—Form of marriage gone through—Recognition by relations.*

Where a man and a woman were proved to have been recognised by all persons concerned as man and wife, so described in important documents and their daughters were respectably married as would be natural in the case of legitimate children. *Held* that these facts, following upon a ceremony of marriage which, undoubtedly took place, though its validity was attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson.*) MANJILAL *v.* CHANDRABATI KUMARI. **38 Cal. 700 = 15 C.W.N. 790 = (1911) 2 M.W N. 91 = 13 Bom. L.R 536 = 14 C.L.J. 72 = 10 M.L.T. 53 = 11 I.C. 502 = 21 M.L.J. 933. (P.C.)**

———S. 114 — *Legitimacy — Connection between man and woman.*

Where the connection between man and woman is permanent, it is presumed to be not adulterous, and the burden of proving, that the connection is adulterous and involves criminal offence, lies on him who raises the contention. (*Sadasiva Aiyar and Napier*, JJ.) PALANI AMMAL *v.* KUPPUSWAMI GOUNDAN. **62 I.C. 769 = 13 L.W. 511.**

———S. 114—*Legitimacy—Presumption.*

It is open to a Sikh to marry any woman he pleased provided she adopted the Sikh religion. The mother of J.S. was always treated among the brotherhood as the wife of S.S. whose son J.S. claimed to be; J.S. was always treated as the legitimate son of S.S., who made no disposition of his property by will or otherwise, and J.S. was referred to in several deeds as the son of S.S. This was sufficient proof that J.S. was a legitimate son of S.S. (*Lyle and Ashworth*, A.J.Cs.) CHANDIKA BAKHSH SINGH *v.* WIDOW OF JAGAN SINGH. **52 I.C. 443 = 6 O.L.J. 331.**

EVIDENCE ACT (I of 1872), S. 114—Lost grant—Easement.

Liquor—Possession of full bottles of Wine.

———S 114—*Liquor — Possession of full bottles of wine.*

The possession of full bottles of wine in a person's house when the number of bottles is less than that allowed by law does not raise the presumption that the bottles were for sale. (*Eales*, C.J.) AH TAT *v.* EMPEROR. **23 Cr. L.J. 424 = 14 I.C. 968 = (1911) 1 U B.R. 96.**

Lost Grant—Easement.

———S. 114—*Lost grant—Easement.*

Where a Zamindar has been using the water of a channel for irrigating his lands from the time of the permanent settlement, the Court may presume from long possession and enjoyment, a right to use the water free of charge. Though an actual grant of an easement is not discovered or proved, it will be presumed. (*Lord Shaw.*) SECRETARY OF STATE *v.* MAHARAJA OF BOBILI. **46 I.A. 302 = (1919) M.W.N. 775 = 37 M.L J. 724 = 18 A.L.J. 1 = 11 L.W. 204 = 2 U.P.L.R. (P.C.) 33 = 51 I.C. 154 (P.C.) = 24 C.W.N. 446 (P.C.)**

———S. 114—*Lost grant—Easement.*

The presumption of a lost grant arises out of the strong desire of the Court to find a legal origin for an ancient and uninterrupted user. The right must be one which could have been the subject of a grant. (*Beaman and Marten*, JJ.) JANARDAN GANESH KHADILKAR *v.* RAVJI BHIKAJI KONDKAR. **42 Bom. 288 = 45 I.C. 448 = 20 Bom. L.R. 398.**

———S. 114—*Lost grant—Easement—Presumption.*

The presumption of a lost grant can be drawn only where the enjoyment of the easement cannot be otherwise accounted for. (*Walmsley and Newbould*, JJ) BANWARI BULLAN ROY *v.* RASH BEHARI ROY. **50 I.C. 933.**

———S. 114—*Lost grant—Presumption—Immemorial enjoyment of a right—Government.*

Where a right has been enjoyed from time immemorial, a legal origin therefor, such as a contract or a grant must be presumed. Where a grant is made by the Government of a right irrespective of the use the grantee might make of it, the presumption is that it is a free grant. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KESARI VENKATASUBBIAH *v.* SECRETARY OF STATE FOR INDIA. **20 I.C. 803 = 14 M.L.T. 131.**

EVIDENCE ACT (I of 1872), S. 114—Marriage.

Marriage.

———S. 114—*Marriage—Unsatisfactory evidence—Presumption.*

The law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously. 6 App. Cas. 364 Rel. This presumption is not to be rebutted or shaken by mere balance of probability but by evidence strong, distinct, satisfactory, and conclusive. 38 C. 701 Ref. Plaintiff's mother and defendant's father lived as husband and wife for a long series of years. The defendants treated the plaintiffs as their legitimate brothers. The plaintiff's mother described herself in a document executed by her as the wife of the defendant's father who was a witness to the document. *Held*, that the presumption of law as that the plaintiff's mother and the defendant's father were married lawfully, and the presumption was not rebutted though the evidence of marriage which took place long ago was not satisfactory. (*Mookerjee and Carnduff*, JJ.) BEPIN BEHARI DAS BAIRAGHI *v.* ATUL KRISHNA DAS.
15 I C. 328=17 C.W.N. 494.

———S. 114—*Marriage—Divorced woman.*

In the case of a divorced woman, the presumption is that she continues unmarried until proved to have married again. (*Scott-Smith*, J.) DAULAT *v.* KHAN.
81 P.L.R. 1915=29 I C. 194=
88 P.W.R. 1915.

———S. 114—*Marriage—Long co-habitation.*

Cohabitation for several years as husband and wife lead to the presumption of their valid marriage. 24 I.C. 367 Foll. (*Ormond*, J.) MASHIM *v.* KIM SEIN. **17 Cr. L.J. 112=**
32 I.C. 848=9 Bur. L.T. 81=8 L.B.R. 225.

Notice.

———S. 114—*Notice under S. 52—Bengal Cess Act—Presumption.*

No presumption of S. 114, Cl. (c) of Evidence Act applies with respect to notice provided by S. 52 of the Cess Act and the person who claims, that a right or an obligation such as the payment of cess by a tenure-holder, has accrued, must prove that the liability had been incurred and the things described in the Act had actually been done. The owner of rent free lands is not bound to pay road cess before the publication of the valuation rolls under S. 52. (*Jwala Prasad and Ross*, JJ.) PITAMBAR CHOWDHURY *v.* RAHMAT ALI. **1 P. 218=**
3 P.L.T. 282=1922 Pat. 167=
1922 P. 303.

———S. 114—*Notice—Title of third person.*

A purchaser of immoveable property in the possession of a third person is presumed to have notice of the title of such third person. (*Maung Kin*, J.) MAUNG BO *v.* MAUNG TUN BYU. **38 I.C. 121.**

EVIDENCE ACT (I of 1872), S. 114—Permanent Tenancy.

Ownership of will.

———S. 114—*Ownership—Wall.*

Certain footings to the wall of a house existed for a long time and the lateral extension of the cornices of the house corresponded with the extension of the footings. It was presumed that the land covering the footings belonged to the owner of the wall. (*Jenkins*, C.J. *and Woodroffe*, J.) ABDUL HUSAIN *v.* RAM CHARAN LAW. **38 Cal. 687=12 I.C. 459=**
16 C.W.N. 313.

Partition.

———S. 114—*Partition—Hindu joint family—Presumption of union—Rebuttal.*

Definition of shares in village records is not sufficient to rebut the presumption of union and jointness in a Hindu family, (*Lord Shaw*) NAGESHAR *v.* GANESHA, **42 All. 363=**
7 O.L.J. 48=2 U.P.L.R. 37=38 M.L.J. 521=
23 O.C. 1=18 A.L.J. 532=
22 Bom. L.R. 696=56 I.C. 306=
28 M.L.T. 5 (P.C.).

———S. 114—*Partition—Entry in revenue records as to joint property.*

An entry in Revenue records raised a presumption as to joint family estate. (*Moti Sagar*, J.) BALBIR SINGH *v.* GOBIND.
1923 Lah. 532.

———S. 114—*Partition—Separation—Hindu Law.*

Entries in revenue papers defining shares, separate residence, institution of suits all together go to prove division though none of them singly can sufficiently establish partition. (*Kanhaiya Lal and Kendall*, A.J.Cs.) BRIJ MOHAN SINGH *v.* RAM MILAN SINGH.
39 I C. 433=4 O.L.J. 124.

Permanent Settlement.

———S. 114—*Permanent settlement—Taluka—Inclusion of.*

The principle of *praesumitur retro* applies not only to cases of the existence of a taluk at the settlement but to cases of long possession when it can be presumed that certain lands existing from before settlement were within the taluk at the permanent settlement. Such a presumption is one of fact and the Court should attach weight to it having regard to all circumstances. (*Chatterjee and Richardson*, JJ.) RAM KRISTO CHAKRABARTY *v.* NARENDRA KISHORE ROY. **35 I.C. 885.**

Permanent Tenancy.

———S. 114—*Permanent tenancy—Temple trustee.*

A presumption cannot be drawn in favour of that which offends against legal principles. No presumption of permanent tenancy cannot be applied to debutter property because the creation of a fixed rent would be a breach of duty

EVIDENCE ACT (I of 1372), S. 114—Silence.

in a shebait. 13 W.R.P. 18 Rel. on. (*Jenkins*, C.J. *and Chatterjee*, J.) SATYASRI GHOSHAN *v.* KARTIK CHANDRA DAS **15 C L J. 227 = 16 C.W.N. 418 = 18 I.C. 595 = Also 33 M.L.J. 84 = 41 I.C. 788 = 44 I.C. 895 = 34 M.L.J. 234.**

Silence.

———S. 114—*Silence—Failure to object to statement of accounts—Evidence of correctness.*

If a statement substantially affecting a person's interest is made to him and the circumstances are such that he would certainly or probably have objected, had the statement been incorrect, then his silence can be treated as an admission, *i.e.*, as evidence of the correctness of the statement. (*Crouch*, A.J.C.) THE MERCANTILE BANK *v.* TAHILRAM PESSUMAL. **27 I.C. 309 = 8 S.L.R. 112.**

Scope of.

———S. 114—*Scope of—Presumption under.*

The presumption indicated in illus. (*g*) to S. 114 of the Act cannot displace a contrary inference supported by adequate evidence. (*Sir Lawrence Jenkins.*) RAMACHANDRUDU *v.* JANAKIRAMANNA. **63 I.C. 740 = 13 L.W. 293 (P.C.).**

———S. 114—*Scope of—Presumption from non-production of document—Old document—Probability of loss.*

Where a document is a very old one the possibility of its having been lost and being no longer in existence is naturally much brighter than in the case of a document of recent date. Consequently the presumption arising from the non-production of the document is not quite a strong one in the case of an old document as in the case of a recent one. (*Daniels*, J.) RAMJI DAS *v.* MIHIN LAL. **1923 All. 441.**

———S. 114—*Scope of—Wrong-doer.*

The law relating to presumptions should not enable a wrong-doer, to turn it to his own use. (*Karamat Hussain*, J.) ZAHURAN *v.* RAHIM. **10 I.C. 742 = 8 A.L.J. 247.**

———S. 114—*Scope of—Co-owner waiving claim—Presumption.*

By taking over the sale and paying the full price, a co-owner waived his own claim to sue. *Held* such action on the part of the co-owner is presumptive evidence that the sale by another co-owner was not bad for want of necessity. (*Scott-Smith and Fforde*, JJ.) MT. BASANTI *v.* CHANDA SINGH. **1923 Lah. 502 (2).**

———S. 114—*Scope of—Custom — Village community.*

Where an agricultural tribe in a Village community live by agriculture, a presumption is in favour of custom. (*Mr. Martineau*, J.) HIRA NAND *v.* HAYAT MOHAMMAD. **61 I.C. 180.**

———S. 114—*Scope of—Illustration.*

The illustrations appended to S. 114 of the Evidence Act are not statements of the law

EVIDENCE ACT (I of 1872), S. 114—Value of Presumption.

qualified only by particular exceptions. They are merely what they call themselves, 'illustrations or instances of the application of certain maxims out of many possible instances. (*Hallifax and Macnair*, A.J.C.) GOVINDA *v.* EMPEROR. **23 Cr. L.J. 673 = 69 I.C. 257 = 17 N.L.R. 113.**

Trusts.

——S. 114—*Trusts—Benami transaction.*

The general rule in principle of the Indian Law as to resulting trusts, differs but little from the general rule of English Law upon the same subject. The decisions have established that Hindus or Mahomedans make transfer or grants for no apparent reason or purpose. Consequently, the presumption of the resulting trust in favour of the person providing the purchase money arises in India and there is no presumption of an intended advancement in favour of the *benamidar* as there is in England. Where a transaction takes place between persons born in India of British parents and who have resided practically all their life in India, the principles and the rules of law are those of the Court of Chancery in England that will apply to them, which rules of law will apply to any given case in India, will not wholly depend on race, place of birth, domicile or residence. But the widespread and persistent usages and practices of the native inhabitants are more important. The mere statement by the husband or the father that he did not intend to confer any beneficial interest on the donee or transferee is of little avail unless he proves that he had other different motives for the action he took. Their Lordships held on the evidence that the presumption was an advancement to the wife was intended was rebutted (*Lord Atkinson.*) KERWICK *v.* KERWICK. **48 Cal. 260 = 47 I.A. 275 = (1920) M.W.N. 738 = 39 M.L.J. 296 = 13 L.W. 466 = 28 M.L.T. 194 = 32 C.L.J. 490 = 23 Bom. L.R. 730 = 57 I.C. 834 (P.C.) = 2 U.P.L.R. 153 (P.C.).**

[On appeal from 47 I.C. 376.]

Value of Presumption.

———S. 114—*Value of presumption—Deed in possession of mortgagor—Presumption.*

The mere fact that the deeds are in the possession of the mortgagor does not itself prove that the mortgagee was a mere benamidar for the mortgagor. (*Macleod*, C.J. *and Crump*, J.) HIRAJI *v.* VISHNU. **1923 Bom. 429.**

———S. 114—*Value of presumption.*

An accused was convicted under S. 412, Penal Code, and the Judge, holding that under S. 114 of the Evidence Act, he must be presumed to have known the nature of the dacoity, sentenced him to the maximum punishment. *Held*, that the sentence was excessive as the presumption alone would not justify fixing the accused with more than

EVIDENCE ACT (I of 1872), S. 114—Value of Presumption.

knowledge that the goods recovered from him had been obtained by dacoity. (*Walmsley and Huda*, JJ.) ASIMUDDIN SARDAR *v.* EMPEROR. **22 Cr. L.J. 60=59 I.C. 204=32 C L J. 89.**

——S. 114 — *Value of presumption — Pedigree table.*

The mere mention of a common ancestor in a pedigree table is not of itself sufficient to prove that all the land in the possession of his descendants descended from that common ancestor. 41 P.R. 1914, Diss. (*Scott-Smith, and Moti Sagar*, JJ.) KARTAR SINGH *v.* LABH SINGH. **5 Lah. L.J. 190=1923 Lah. 353.**

——S. 114—*Value of presumption—Value of.*

Rebuttable presumptions are given to the ascertainment of facts. It is an abuse of their true function to convert them into an excuse for evading the ascertainment of facts. (*Coutts-Trotter*, J.) AYYA PERUMAL UDAYAN *v.* RAMASWAMY CHETTIYAR. **2 L.W. 650=29 M.L J. 362=30 I.C. 983=(1915) M.W.N. 614.**

——S. 114, Illn. (a)—*Presumption—Stolen property possession of—Joint trial—Thief and receiver of stolen property.*

Possession of the stolen property by a person on the next morning after a burglary is presumptive evidence that he is one of the thieves. (*Tudball*, J.) BAIJU *v.* EMPEROR. **14 Cr. L.J. 124=14 I.C. 634=11 A.L.J 94.**

——S. 114, Illn. (a)—*Stolen property—Possession after a long time—Presumption.*

No ground for presumption under S. 114, Evidence Act, arises where stolen properties of an ordinary kind and of small value are found in the possession of the accused after a long time. (*Chitty and Smither*, JJ.) JOYENALLAH BEPARI *v.* EMPEROR. **19 Cr. L.J. 702=46 I.C. 158=22 C.W.N. 597.**

——S. 114, Illn. (a)—*Crime—Misconduct—Presumption.*

If articles are found in a house occupied by several members, there is a presumption that they were in the possession of the *karta*. There is a presumption against crime and misconduct and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. 39 C. 245 at 255, Ref. (*Woodroffe, Coxe and Chatterjee*, JJ.) D. WESTON *v.* PEARY MOHAN DAS. **40 Cal. 893=23 I.C. 25=18 C.W.N. 185.**

——S. 114, Illn. (a)—*Recent possession—Article belonging to the accused—Blood on articles—Theft—Murder.*

Where in a case of murder the accused is found to have had recent possession of the

EVIDENCE ACT (I of 1872), S. 114, Illn. (a).

articles belonging to the deceased, leaving traces of human blood, this is a fact from which the Court might presume not only theft but murder too. (*Jenkins*, C.J. *and Sharfuddin* J.) EMPEROR *v.* SHEIKH NEAMATULLA. **14 Cr. L J 556=21 I.C. 156=17 C.W.N. 1077.**

——S. 114, Illn. (a)—*Stolen goods—Discovery of, after long time.*

The presumption concerning stolen goods in S. 114, Illn. (*a*) of the Evidence Act arises only when the stolen goods are found 'soon after' the theft. Thirteen months after the occurrence cannot be regarded as coming within the rule. (*Seshagiri Aiyar*, J.) JAINULLABDIN, *In re*. **11 L.W. 43=53 I.C. 819=20 Cr. L.J. 819=26 M L.T. 389.**

——S. 114, Illn. (a)—*Theft — Lapse of time—Effect of.*

S. 114, Illn. (*a*) of the Evidence Act is merely illustrative of the manner in which the inferences can be drawn from the common course of events, human conduct, etc. In a prosecution for receipt of stolen goods, lapse of time after the theft is usually an important factor in determining the guilt of the accused but the importance to be attached to it must vary with the circumstances of the individual case and depends on the frequency with which the property is likely to have changed hands. No maximum period is suggested as that beyond which no inference of guilt can be drawn. 6 A. 224; (1912) M.W.N. 529 Dist. (*Ayling and Phillips*, JJ.) SMITH *v.* EMPEROR. **43 I. C. 603=19 Cr. L.J. 189.**

——S. 114, Illn. (a)—*Stolen property—Found in possession of a person three weeks after theft—Presumption.*

Where stolen property is found in the possession of a person three weeks after theft, the presumption is that he must have received the property knowing or having reason to believe it to be stolen and not that he has committed theft. In order to raise a presumption the length of time that has elapsed, the amount of property found in a man's possession, and the circumstances leading to discovery, have to be considered and in raising the presumption as to the receipt of the stolen property it is not necessary that there should be evidence that he knew it to be stolen. (*Sundara Aiyar and Spencer*, JJ.) *In re* GORLE KANDUNGADU. **13 Cr. L.J. 140=13 I.C. 828=(1912) M.W.N. 97.**

——S. 114, Illn (a)—*Murder—Robbery—Possession of articles.*

In a case where murder and robbery form part of one and the same transaction the recent and unexplained possession of stolen articles by the accused unless shown that he was only the receiver of stolen property, would

EVIDENCE ACT (I of 1872), S. 114, Illn. (a).

raise a presumption not only of robbery but also of murder. (*Benson and Sundara Aiyar*, JJ.) PUBLIC PROSECUTOR *v.* OHIYA REDDI.
21 M.L.J. 1071=12 I.C. 682=12 Cr. L.J. 561=(1911) 2 M.W.N. 478.

——**S. 114, Illn. (a)**—*Murder and robbery — Recent possession of stolen goods—Presumption.*

In a case in which murder and robbery form part of one transaction, the recent and unexplained possession of the stolen property by the accused is not only presumptive evidence against him on the charge of robbery but is also evidence against him on the charge of murder. 13 M. 426, Rel. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) RAMJI *v.* EMPEROR. **53 I.C. 481=20 Cr. L.J. 753.**

——**S. 114, Illn. (a)**—*Possession of stolen property.*

If a thief got into a house by house breaking and the stolen property was found in his possession, he may be presumed to have committed the theft as well as house breaking. (*Fox*, C.J.) HUSSAIN *v.* EMPEROR.
32 I.C. 160=17 Cr. L J. 32.

——**S. 114, Illn. (b).**

See also EVIDENCE ACT, S. 133.

——**Ss. 114, Illn. (b) and 133**—*Approver—Uncorroborated testimony—Conviction.*

Though the absence of any corroboration of the statement of an approver is not fatal to the conviction of a person named by him as one of the participators in an offence, it casts doubts upon its justice and the accused is entitled to the benefit of the doubt. (*Walsh and Piggott*, JJ.) ALLAUDDIN *v.* EMPEROR.
52 I.C. 49 =20 Cr. L.J. 561.

——**Ss. 114, Illn. (b) and 133**—*Corroboration—Necessity.*

The law as such does not necessarily demand any corroboration to validate the accomplice's evidence. It is a rule of practice to have such corroboration and must be applied with due regard to each particular case. No precise degree of corroboration is required. Corroboration is required not only of the incidents but also of the identity of the offender. Every detail need not be fortified. (*Batchelor and Rao*, JJ.) EMPEROR *v.* KUBERAPPA.
14 Cr. L.J. 226=19 I.C. 321=16 Bom. L.R. 288.

——**Ss. 114, Illn. (b) and 133**—*Accomplice—Evidence of.*

A conviction cannot be sustained on the evidence of an accomplice unless there is corroboration in material particulars by means of independent testimony. The degree of corroboration required depends upon the facts of such case. The position, connection and general conduct of an accused cannot be

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

taken as affording sufficient corroboration. Nor can the circumstances elicited in the accomplice's evidence be held in themselves as affording sufficient corroboration. (*Chandavarkar and Batchelor*, JJ.) EMPEROR *v.* CHHOTALAL BABAR, **13 Cr. L J. 542=15 I.C. 814=14 Bom. L.R. 567.**

——**S. 114, Illn. (b)**—*Accomplice—Evidence of weight due to—Corroboration.*

Evidence of an approver is in itself tainted evidence though in some cases it may be worth believing for various reasons. The uncorroborated statement of an approver taken at the end of the trial is of no value at all. Statements of witnesses extorted by the Police under threats of implication in the crime are less valuable especially where they had no reason for refraining from deposing against the culprits. (*Shadi Lal*, C.J. *and Wilberforce*, J.) SUNDAR SINGH *v.* EMPEROR.
21 Cr. L.J. 507=56 I.C. 667=103 P.L.R. 1920.

——**S. 114, Illn. (b)**—*Accomplice—Who is—Person aware of intention to commit crime omitting to give information—Corroboration.*

A person being aware of the existence of certain people's purpose and plan to commit a murder, hides his knowledge of the fact by not disclosing it to anybody is a consenting party to the crime and corroboration is required to take his evidence for he is an accomplice. Accomplices' evidence cannot be accepted as corroborative of each other. (*Rattigan*, C.J. *and Martineau*, J.) SHARAH *v.* EMPEROR.
14 P.W.R. (Cr.) 1919=49 I.C. 607=20 Cr. L.J. 191=20 P.R. 1919 (Cr.)

——**S. 114, Illn. (b)**—*Corroboration—Necessity.*

A conviction based on the uncorroborated testimony of an approver is illegal. (*Leslie Jones*, J.) GURDIT SINGH *v.* CROWN.
9 P.W.R. 1918 (Cr.)=44 I.C. 967=19 Cr L.J. 439=52 P.L.R. 1918.

——**S. 114, Illn. (b)**—*Corroboration—Material and general.*

There is a difference between general and material corroboration which in fact means evidence concerning participation of his companion in committing the crime. To be found in the company of the approver shortly after the offence was committed is very strong indication of fellowship in the crime. 5 P.R. 1902, Dist. (*Leslie Jones*, J.) SAHAI SINGH *v.* EMPEROR. **18 Cr. L.J. 852=41 I.C. 820=21 P.W.R. 1917 Cr.**

——**Ss. 114, Illn. (b) and 133**—*Corroboration—Extent—Previous statements of accomplice.*

No hard and fast rule can be laid down as to the extentof corroboration of an 'accomplice.' Previous statements of an accomplice may

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

mean corroboration. S. 133 of the Evidence Act contains the rule of law and S. 114, Illn. (*b*) a rule of guidance for the assistance of Courts. 35 M. 247; 21 W.R. 69; 21 M.L.J. 283; 26 B. 193, Ref. (*Johnstone*, C.J. *and Broadway*, J.) BARKAT ALI *v.* EMPEROR.
18 Cr. L.J. 29=36 I.C. 861=2 P.R. 1917 Cr.

——**Ss. 114, Illn. (b) and 133**—*Approver—Corroboration—Lower class accused.*

Courts should not ordinarily depart from the well-recognized practice of accepting the evidence of an approver only when it is corroborated in material particulars. This is the mere necessity where the accused belongs to a lower class and it is a matter of no difficulty for any one to include his name as an accused and as it is difficult for him to establish his innocence. In exceptional cases Courts might be right if for reasons stated they act upon the evidence of an approver as a whole though uncorroborated in material particulars. (*Rattigan and Chevis*, JJ.) GHULAM RASOOL *v.* EMPEROR. **17 Cr. L.J. 220=34 I.C. 332=31 P.W.R. 1916 Cr.**

——**S. 114, Illn. (b)** — *Corroboration—What is.*

Evidence showing that the co-accused or some of them were seen in the company of the approver at or in the vicinity of the place at which, he says, dacoities were to be committed is not sufficient corroboration in support of his statement. (*Rattigan*, J.) MARYAM SINGH *v.* CROWN. **32 I.C. 843=17 Cr. L.J. 107=2 P.W.R. (Cr.) 1916.**

——**S. 114, Illn. (b)**—*Value of approver's testimony.*

The value to be attached to the statements of an accomplice or approver must be decided in every case upon the particular and peculiar circumstances of every case. (*Johnstone*, C.J. *and Rattigan*, J.) BACHINTA *v.* EMPEROR.
32 I.C. 833=17 Cr. L.J. 97=7 P.W.R. 1916 Cr.

——**S. 114, Illn. (b)**—*Approver—Evidence—Corroboration.*

The mere production by the accused of stolen property from a place within his possession is not sufficient corroboration of the approver's testimony to have a conviction thereon. (*Leslie Jones*, J.) UDA *v.* CROWN.
16 Cr. L.J. 634=30 I.C. 458=23 P.W.R. (Cr.) 1915.

——**Ss. 114, Illn. (b) and 133**—*Corroboration—Accomplice—Evidence.*

An accomplice is a competent witness and a conviction based on his uncorroborated testimony is not illegal under S. 133 of the Evidence Act. Notwithstanding S. 114, Illn. (*b*) Courts are not tied down in any technical way but it is their duty when deciding whether any corroboration of a particular accomplice is required and what amount or kind of corroboration is required to look at the question as a prudent man desiring to arrive at the truth. As a general rule, corroboration is necessary but no general rule can be laid down as to the extent and nature of such corroboration. (*Johnstone and Rattigan*, JJ.) BALMUKUND *v.* CROWN. **28 I.C. 732=216 P.L.R. 1915=17 P.R. (Cr.) 1915=11 P.W.R. (Cr.) 1915=16 Cr. L.J. 354.**

——**S. 114, Illn. (b)**—*Accomplice—Corroboration.*

It is unsafe to act on the uncorroborated testimony of an accomplice even though he is a mere relative of the accused. (*Reid*, C.J. *and Ryves*, J.) HIRA *v.* EMPEROR.
9 I.C. 39=12 Cr. L.J. 5=1 P.W.R. 1911 Cr.=19 P.L.R. 1911.

——**Ss. 114, Illn. (b) and 133**—*Accomplice—Corroboration.*

Per Benson, Wallis and Miller, JJ.—A Court can act on the uncorroborated evidence of an accomplice when it believes his evidence to be true. Illn. (*b*) to S. 114 of the Evidence Act does not render nugatory, the express declaration convicted in S. 133 of the Evidence Act. *Per Abdur Rahim*, J.—S. 133 should be considered along with illn. (*b*) to S. 114. Except under special circumstances, the Court should presume that the evidence of an accomplice is unworthy of credit against accused persons unless it is corroborated in material particulars. 21 M.L.J. 283 Foll. (*Per Sundara Aiyar*, J.) S. 114 should be read along with S. 133 of the Evidence Act. Though the Evidence Act does not require the Court to presume the untrustworthiness of any accomplice's evidence, the proper course for the Court to follow is to make the presumption useless there is a special occasion for not being so. *Per Benson, Wallis and Miller*, JJ.—Under S. 157 of the Evidence Act the previous statements of an accomplice are sufficient corroboration of his evidence given at the trial whatever weight may be attached to them. *Per Abdur Rahim and Sundara Aiyar*, JJ. *contra*,—The previous statements of an accomplice cannot legally amount to corroboration. (*Benson, Wallis, Miller, Abdur Rahim and Sundara Aiyar*, JJ.) MUTHUKUMARASWAMI PILLAI *v.* EMPEROR.
14 I.C. 896=13 Cr. L.J. 352=35 Mad. 397=(1912) M.W.N. 519=12 M.L.T. 1 (F.B.)

——**Ss. 114, Illn. (b) and 133**—*Corroboration—Accomplice's testimony.*

Per White, C.J. *and Ayling*, J.—Courts can act on the evidence of an accomplice even if there is no corroboration in the strict sense of the word although such evidence should be scrutinised with great care and accepted with the greatest caution. Previous statements of an accomplice can be regarded as corroborative of the evidence given by him at the trial. 11 B.H.C.R. 196 and 10 C. 973 dissented from. *Sankara Nair*, J. *contra*:—A person should not be convicted except under very special circumstances upon the uncorroborated testimony of an accomplice. The illustrations

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

given under S. 114 are for the most part such rules of evidence as are treated as the presumptions of law. The Evidence Act converts them into maxims or presumptions to be drawn by the Court. A previous statement by the accomplice himself or a statement by another accomplice is not the corroboration required by the act. (*White*, C.J. *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILAKANTA. **35 Mad. 217 = (1912) M W.N. 207 = 13 Cr. L J. 305 = 22 M L.J. 490 = 14 I.C. 849 = 11 M.L.T. 1 Supp.**

———S. 114, Illn. (b)—*Evidence of—Approver—Conviction based on.*

A conviction should not be based upon the evidence of the approver alone. It should be corroborated by reliable independent evidence. (*Munro and Abdur Rahim*, JJ.) NAWZIGADU *v.* EMPEROR. **10 I.C. 284 = 12 Cr. L.J. 240.**

———S. 114, Illn. (b)—*Accomplice—Credibility.*

The uncorroborated evidence of an accomplice should not be accepted unless for special reasons. But where such reasons exist, a conviction based thereon is not illegal. Where the statement of a deceased accomplice is not made in the presence of the accused, little weight can be attached to it as corroborative evidence. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* TALARI NARAINA SWAMI, **9 I.C. 978 = 9 M.L.T. 503.**

———Ss 114, Illn. (b) and 133—*Accomplice's evidence—Conviction—Absence of corroboration.*

A conviction on the evidence of an accomplice is not justified unless it is corroborated. (*Fox*, C.J. *and Ormond*, J.) PAN GANG *v.* EMPEROR. **42 I.C. 1002 = 19 Cr. L J. 42.**

———S. 114, Illn. (b)—*Accomplice's evidence—Corroboration.*

A conviction may be upheld when it is based on the uncorroborated evidence of accomplice. The Court should ordinarily and especially in Excise cases, require corroboration. Hearsay evidence cannot be admitted to corroborate accomplice's evidence. (*Eales*, C.J.) AH TAT *v.* EMPEROR, **14 I.C. 968 = 23 Cr. L.J. 424 = U.B.R. 1 (1911) 96.**

——— Ss. 114, Illn. (b) and 133—*Accomplice—Corroboration.*

The provision contained in S. 133 and in S. 114 (*b*) amounts to a direction to all judges and magistrates that a fact cannot be held proved within the meaning of S. 3 if the only evidence is the statement of an unreliable witness. All accomplices are not wholly unworthy of credit. (*Pratt*, J.C. *and Crouch*, A.J.C.) RAMCHAND *v.* EMPEROR.
19 I.C. 534 = 14 Cr. L.J. 262 = 6 S L.R. 195.

———S. 114, Illn. (b)—*Corroboration—Evidence of—Accomplice.*

The presumption contained in S. 114, Illn. (*b*) does not apply when the act of the accomplice imports no great moral delinquency. The

EVIDENCE ACT (I of 1872), S. 114, Illn. (e).

rule as to corroboration is a rule of practice. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* ISVARDAS. **17 I.C. 79 = 13 Cr. L J. 767 = 6 S L.R. 106.**

———S. 114, Illn. (c)—*Presumption of consideration.*

When both parties adduce evidence on the question of consideration for the pro-note the presumption of consideration does not arise. (*Krishnaswami Aiyar*, J.) *In re* KANNUSWAMI PILLAI, **9 I.C. 79 = 8 M.L.T. 463.**

———S. 114, Illn. (d)—*Landlord and tenant—Continuation of relationship.*

In a suit for arrears of rent, a decree for rent obtained by the landlord in a prior suit against the same defendants is not merely an item of evidence but is conclusive as to the relationship of landlord and tenant at the time to which the previous suit referred. S. 114, Illn. (*d*) does not compel but certainly permits the Court to make a presumption as to the continuance of the state of things. (*Jenkins*, C.J. *and N. R. Chatterjee*, J.) HIRAN MOY KUMAR SAHA *v.* RAMZAN ALI DEWAN.
43 Cal. 170 = 29 I.C. 694 = 20 C.W.N. 48.

———S. 114, Illn. (d)—*Lunacy — Continuance.*

Where a person has been found to be a lunatic under the Lunacy Act the presumption is that he continues to be of unsound mind. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. **3 L.W. 290 = 33 I.C. 578 = 19 M.L.T. 243.**

———S. 114, Illn. (d)—*Profligacy.*

The proof of the general profligacy of a person raises a presumption under S. 114 of the Evidence Act that it continued during his life time. (*Pratt*, J. C. *and Crouch*, A.J.C.) SHAHUL *v.* ALLAH BACHAYO. **34 I.C. 504. 9 S L R. 196.**

———S. 114, Illn. (d)—*Continuance of possession.*

When evidence of acts of ownership cannot reasonably be expected, it can be presumed that the owner's possession, once proved, was continuous. (*Hayward*, J.C. *and Boyd*, A.J.C.) SECRETARY OF STATE *v.* MUSHTAK SINGH.
24 I.C. 813 = 7 S.L.R. 169.

———S. 114, Illn. (e)—*Presumption that judicial acts have been properly performed—False evidence, effect of—Rebuttal.*

An auction sale of several properties situated in several villages was sought to be set aside on the ground that the sale proclamations were not duly served in all the villages. The record of the service of the proclamations was destroyed by a fire which broke out in the Court house. *Held*, that the burden of disproving the *prima facie* presumption that official acts were rightly carried out rests with the persons challenging the sale. But if it is proved that proclamations alleged to have been

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served in specific modes in some of the villages could never have been so served, that does not leave the other cases unaffected but the whole story of the service of the proclamations completely breaks down and becomes a series of concocted falsehoods prepared for deliberately misleading the Court. The party on whose behalf this evidence had been prepared should be associated with the scheme of deceit which it was designed to carry out and such association should be regarded as an important element in determining whether his defence was honest and just. (*Lord Buckmaster*). MADHU SUDAN CHOWDHRI *v.* CHANDRABATI CHOWDHRAIN. **21 C.W.N. 897 = (1917) M.W.N. 518 = 42 I.C. 517 = 6 L.W. 467 (P.C.).**

———S. 114, Illn. (e)—*Stamp — Compromise petition—Creating mortgage filed in Court —Original lost—Certified copy.*

Where the original of a compromise petition creating a mortgage and filed in Court is missing and a certified copy of the petition is filed the presumption is that the compromise petition was duly stamped. (*Mr Ameer Ali.*) AHMED RAZA *v.* ABID HUSAIN. **38 All. 494 = 5 L.W. 153 = 18 Bom. L.R. 904 = 14 A.L.J. 1099 = 20 M.L.T. 447 = 24 C.L.J. 594 = (1916) 2 M.W.N. 548 = 21 C.W.N. 285 = 1 P.L.W. 90 = 39 I.C. 11 = 43 I.A. 264 (P.C.).**

———S. 114, Illn. (e)— *Statements in mutation proceedings—Oudh Land Revenue Act (XVII of 1876), S. 62.*

Statements made by a *purdanashin* lady in documents coming before officers conducting mutation proceedings who act upon them and order mutation of names are admissions by her to which weight should be attached, on the principle of '*praesumuntur recta esse acta.*' (*Lord Atkinson.*) SADIN HUSAIN KHAN *v.* HASHIM ALI KHAN. **38 All. 627 = 6 L.W 378 = 21 M.L.J. 607 = 14 A.L.J 1248 = 19 O.C. 192 = 18 Bom. L.R. 1037 = 21 C.W.N. 130 = (1916) 2 M.W.N. 577 = 21 M.L.T. 40 = 1 P.L.W. 157 = 4 O.L.J. 22 = 25 C.L.J. 363 = 10 Bur. L.T. 140 = 36 I.C. 104 = 43 I.A. 212 (P.C.).**

———S. 114, Illn. (e)—*Oath—Presumption of administering.*

The ordinary presumption is that an oath was duly and properly administered. (*Ryves, J.*) SYED AHMAD *v.* EMPEROR. **38 All. 575 = 15 Cr. L.J. 19 = 32 I.C. 163 = 11 A.L.J. 988**

———S. 114, Illn. (e)—*Official and judicial acts—Ex parte entries of service in reference to execution proceedings.*

Ex-parte entries in the order sheet of a Court neither prove their correctness nor raise a presumption of their being false. A party therefore who contends that they do not correctly state events must start his case. But the position is different in the case of one who is not a party to the execution proceedings

EVIDENCE ACT (I of 1872), S. 114 Illn. (e).

and who is affected by such entry. 36 C. 726; 19 C.W.N. 1159, Dist. (*Mookerjee and Cuming, JJ.*) BINDHU BASHINI DASYA *v.* KESHAB LAL BASU. **21 C.W.N. 945 = 37 I.C. 66 = 26 C.L.J. 109.**

———S. 114, Illn. (e)—*Thak and survey map—Presumption of accuracy.*

Thak and survey maps may be presumed to have correctly delienated the boundaries of the village and furnish valuable evidence of persons in possession at the time they were made and consequently also of title. The presumption may be rebutted. (*Mookerjee and Beachcroft, JJ.*) MOHENDRA NATH *v.* SHAMSUNNESSA. **19 C.W.N. 1180 = 27 I.C. 954 = 21 C.L.J. 157.**

———S. 114, Illn. (e)—*Judicial acts—Presumption of regularity.*

The Collector is a Revenue officer though he may at times have to perform judicial functions. His acts like those of all other executive officers are presumed to be regular. If he has certified in the order sheet that he has duly served certain notices to annual encumbrances, a Judge is not entitled without evidence to conclude otherwise. (*Fletcher and Richardson, JJ.*) SITIKANTHA ROY *v.* BIPRA. DAS CHARAN. **27 I.C. 447.**

———S. 114, Illn. (e)—*Post mark—Presumption—Addressee swearing to non-receipt—Effect.*

A post-mark is presumed to be genuine and is evidence that the cover bearing it was stamped on the date the impression bears and that the office mentioned therein was the place where it was affixed. But the date of the letter is not necessarily the date of posting. When the addressee of a letter pledges his oath that a certain cover did not reach him or was never tendered to him, the regularity of official business cannot be treated as conclusive against him. (*Mookerjee and Walmsley, JJ.*) GOVINDA CHANDRA SAHA *v.* DWARAKA NATH PATITA. **20 C L J. 455 = 26 I C. 962 = 19 C.W.N. 489.**

———S. 114, Illn. (e)—*Authority of agent.*

Where a petition signed by an agent on behalf of a party comes out of a public office the presumption is that the officer was satisfied about the agent's authority to sign on the party's behalf. (*Fletcher and Richardson, JJ.*) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. **25 I C. 852.**

———S. 114, Illn. (e)—*Act done by Public Officer—Revenue Sale Law—Commissioner.*

The ordinary presumption is that an act done by a Public Officer in his public capacity is rightly done and the person alleging the contrary has to prove the allegation. The presumption was applied to the acts of a Commissioner acting under the Bengal Land Revenue Sale Law. (*Brett and Mookerjee, JJ.*) CHOWDHURY RAM PRASAD SINGH *v.* CHOWDHURY POWAN SINGH. **21 I.C. 254 = 18 C.L.J. 97.**

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———S. 114, Illn. (e)—*Official acts—Presumption of.*

Where the record of a resolution by a Municipality is lost and no secondary evidence of it is given under S. 65 the presumption of the regularity of official acts under S. 114 of the Evidence Act could not supply the deficiency in proof. (*Sharfuddin and Richardson*, JJ.) MOOKRAM ALI *v.* CUTTACK MUNICIPALITY. **14 Cr. L.J. 91=18 I.C. 651=17 C.W.N. 931.**

———S. 114, Illn. (e)—*Judicial acts—Presumption.*

Although there is no presumption of law that a particular act to be performed has been done, yet, judicial acts must be presumed to have been regularly performed. (*Mookerjee and Beachcroft*, JJ.) GOKUL PADAN *v.* GANESH LAL PANDIT. **17 C.W.N. 565=17 I.C. 936=16 C.L.J. 404.**

———S. 114, Illn. (e)—*Foreclosure—No presumption that the notices were served.*

In a suit to redeem a mortgage the mortgagee alleged that the mortgage was a *Bai bil-wafa* and that under foreclosure proceedings the mortgage had turned into an out and out sale. *Held*, that as the records of foreclosure proceedings were burnt, it cannot be presumed that those were regular. (*Chevis*, J.) PARMAND *v.* THIKHU. **121 P.W.R. 1915=30 I.C. 817. 57 P.L.R. 1916.**

———S. 114, Illn. (e)—*Presumption—Revenue records—Burden of proof.*

A statutory presumption is made in favour of the correctness of the revenue records and the onus is on the party who disputes their correctness to show that they are incorrect. (*Johnstone and Shadi Lal*, JJ.) THIRAJ *v.* KASIM. **48 P.W.R. 1915—26 I.C. 481=124 P.L.R. 1915.**

———S. 114, Illn. (e)—*Scope of.*

Illustration (e) of S. 114 of the Evidence Act is not exhaustive and the general language of the section applies to all acts or proceedings which might be presumed to have been done in the usual course of business. 32 C. 1107, Ref. to. (*Seshagiri Aiyar and Phillips*, JJ.) LAXIMIPATHAYA *v* RAMACHANDRA. **31 M.L.J. 311=(1916) 2 M.W.N. 133=35 I.C. 421=20 M.L.T. 228.**

———S. 114, Illn. (e)—*Certified copy—Presumption of genuineness.*

Under S. 114, a certified copy of a will supplied under the ordinary copyist rules may be presumed to be a correct copy of the original will which was in Court at the time when the copy was made. (*Wallis*, C.J.) DURAISWAMI REDDY *v.* MUTHULINGA REDDY. **22 I.C. 50=19 M.L.T. 1.**

———S. 114, Illn. (e)—*Official statement—Presumption of accuracy.*

An official statement made in the ordinary course of official business by a public officer must be presumed to be accurate. (*Benson and Miller*, JJ.) NARAYANASWAMY NAIDU *v.* CHINLALAPATI SUBBARAJU. **14 I.C. 1007=22 M.L.J. 393.**

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———S. 114, Illn. (e)—*Official acts—Presumption—Rebuttal.*

The principle that acts of a Court are presumed to have been regularly done does not apply if an examination of the record shows that a party has not been properly served. (*Daniels*, O.A.J.C.) ZAIBUNNISSA *v.* HASARATUNISSA. **1. U.P.L.R. (J.C.) 1=32 I.C. 162=22 O.C. 124.**

———S. 114, Illn. (e)—*Official acts—Deputy Commissioner acting under Bengal Regulation XVII of* 1806.

The action of Deputy Commissioner under Regulation XVII of 1806, is a purely ministerial one. His acts, therefore are official acts and the presumption in S. 114, illustration (e) of the Evidence Act, is applicable to them. (*Stuart*, J.C.) JWALA BAKSHI SINGH *v.* NOWAZISH ALI. **6 O.L.J. 3=49 I.C. 402=1 U.P.L.R. (J.C.) 20.**

———S. 114, Illn. (e)—*Judicial acts—Presumption—Rebuttal of.*

The presumption under S. 114, Evidence Act, in favour of the legality of a Court's proceedings can only be overturned by exceptionally strong evidence. (*Lindsay*, J.C.) SHEODARSHAN LAL *v.* ASSESA SINGH. **46 I.C. 52=5 O.L.J. 179.**

———S. 114, Illn. (e)—*Acts following a judicial act.*

A presumption under S. 114 of the Act can be raised even in regard to proceedings that follow a judicial act. The filing of a process fee for the issue of an order of attachment of immoveable property is not sufficient proof of such service. (*Kanhaiya Lal*, A.J.C.) LALJI *v.* GANGA PRASAD. **26 I.C. 201=1 O.L.J. 549.**

———S. 114, Illn. (e)—*Official acts—Presumption of regularity—Warrant of attachment.*

The burden of proving that a warrant of attachment signed by the sheristadar but not the presiding Judge of the Court, is illegal on the ground of want of authority in the Sheristadar, is on the person alleging it. The Court will presume that all acts done in connection with an official document were properly performed. (*Mullick and Thornhill*, JJ.) KHIDIR BUXE *v.* EMPEROR. **20 Cr. L.J. 139=49 I.C. 171=3 P.L.J. 636.**

———S. 114, Illn. (e)—*Official acts—Regularity of.*

Under S. 114 of the Evidence Act there is a presumption that an official act has been regularly performed; but where an applicant before the Court is attempting to rebut that presumption it is not for the Court itself to give assistance to the other side or to deal

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with the matter otherwise than impartially. (*Roe and Jwala Prasad*, JJ.) MUSSAMMAT SOHAGBATI *v.* BABU SURENDRA MOHAN SINGH. **44 I.C. 661=4 P.L.W. 296.**

——**S. 114, Illn. (e)**—*Acts done in connection with S. 167 of the Bengal Tenancy Act.*

Under S. 114 of the Evidence Act it must be presumed that all acts in connection with S. 167 of the Bengal Tenancy Act are done in accordance with law and are valid. (*Roe and Jwala Prasad*, JJ.) RAM PROTAP MARWARI *v.* JHOOMAK JHA. **39 I.C. 943=1 P.L.W. 440.**

——**S. 114, Illn. (e)**—*Official acts.*

There is a presumption that official acts are regularly performed. (*Hartnoll, Offg. C.J. and Ormond*, J.) EMPEROR *v.* A. J. COOKE. **7 Bur. L T. 187=23 I.C. 195=15 Cr.L.J. 243=7 L.B.R. 319.**

——**S. 114, Illn. (f)**—*Letter sent by post—Presumption.*

Where a notice to quit is properly addressed and posted, the presumption is that it reached the addressee. If the letter is registered the presumption is stronger. Acknowledgment of receipt signed by person other than the addressee is not sufficient to prove that letter did not reach the addressee. See T. P. Act, 106. (*Lord Atkinson*). HARIHAR BANERJEE *v.* RAMESHI ROY. **46 Cal. 458=9 L.W. 148=16 A.L J. 959=35 M.L J. 707=29 C.L J. 117=23 C.W.N. 77=25 M.L.T. 189=21 Bom L.R. 522=(1919) M.W.N. 471=1 U.P.L.R 55=48 I.C. 277=45 I.A. 222 (P.C.).**

——**S. 114, Illn. (f)**—*Service of notice by post—Refusal to accept.*

A notice to quit was given by a registered post but the letter containing the notice was returned to the Post Office, the addressee having refused to accept it. *Held*, that under S. 114 of the Evidence Act the Court was entitled to presume that the letter containing the notice reached the defendant. (*Fletcher and Huda*, JJ.) GIRISH CHANDRA GHOSH *v.* KISHORE MOHAN DAS. **24 C.W.N 478=51 I C. 5=23 C.W.N. 319.**

——**S. 114, Illn. (f)**—*Letter sent by post—Presumption.*

Proof of the fact of a letter correctly addressed having been posted and not received back may raise a presumption that it has been delivered to the addressee but proof of the fact of a letter duly sent and returned to the sender does not justify the presumption that the letter has been refused by the addressee. The presumption mentioned in section 114 of the Act is a presumption of fact, not of law. As to fixing the date of its tender to the addressee, the usual course of mail, and the place of receipt, it is a matter purely of evidence. (*Mookerjee and Walmsely*, JJ.) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATITA. **20 C.L.J. 455=26 I.C. 952=19 C.W.N. 489.**

EVIDENCE ACT (I of 1872), S. 114, Illn. (g).

——**S. 114, Illn. (f)**—*Notices — Proof of service of—Return of registered cover containing notice—Refusal of addressee to accept.*

Where on a registered cover proved to have been posted and produced by the plaintiff in Court there is an endorsement by an officer of the Post Office stating the refusal by the defendant addressee to receive the cover it is sufficient to prove the service of the notice. (*Richardson and Newbould*, JJ.) DURGA NATH *v.* RAJENDRA NATH. **20 I.C. 362=17 C.W.N. 1073.**

——**S. 114 (f)** — *Posting of letter—Presumption of reaching addressee.*

The Court may presume where the posting of a letter is proved and the same is not returned by the Dead Letter Office, that it must have reached the addressee. (*Schwabe C.J. and Krishnan*, J.) ABURUBAMMAL *v.* OFFICIAL ASSIGNEE, MADRAS. **45 M L.J. 817=19 L.W. 51=33 M L.T. (H C.) 217=47 Mad. 215=1924 M. 214.**

——**S. 114, Illn. (f)**—*Presumption under—Lower appellate Court—Second appeal.*

Where upon the evidence, a presumption of fact under S. 114, Illustration (*f*), is drawn by an Appellate Court such presumption is binding upon a Court of second appeal. (*Mitra*, A.J.C.) RAMCHANDRA KANIRAM MARWADI *v.* LAXMAN. **53 I.C. 62.**

——**S. 114, Illn. (f)**—*Notice sent by registered post.*

Where defendant denies receipt of a notice sent by registered post, plaintiff has to prove by calling the post peon that the post card was tendered and refused by the defendant. (*Mitra* A.J.C.) RAJA UDRAM *v.* KHANBEG AMIR BEG. **48 I.C. 904.**

——**S. 114, Illn. (g)** — *Non-production of material witness—No comment in trial Court—Appellate Court.*

No inference should be drawn against a party for not producing a material witness where the question of the absence of such witness was not raised at the trial. (*Lord Phillimore.*) BANWARI LAL *v.* MAHESH. **41 All. 63=21 O C. 328=23 C.W.N. 377=6 O.L.J. 168=(1919) M W.N. 490=49 I.C. 540=45 I.A. 284 (P.C.).**

——**S. 114, Illn. (g)**—*Accounts—Failure to produce—Presumption—Benami.*

When a party whose business it is to produce or account for the non-production of certain books of account, relevant to the subject-matter in dispute in a case, fails even after an order for discovery has been made upon him, to produce the same or give evidence of diligent search and of failure to find them even if the fact and date of their destruction cannot be proved, two consequences would follow, *viz.*, (1) the opposite party can give secondary

evidence of their contents and (2) the presumption arises that the contents of the books not accounted for are as regards the issues in dispute unfavourable to the party in default. (*Lord Sumner.*) MOTILAL *v.* KUNDAN LAL.
32 M.L.J. 468 = 15 A.L.J. 329 = 1 Pat. L.W. 490 = 25 C.L.J. 581 = 19 Bom. L.R. 471 = 21 C.W.N. 929 = 22 M.L.T. 10 = (1917) M.W.N. 464 = 39 I.C. 984 = 6 L.W. 92 (P.C.).

——S. 114, Illn. (g)—*Account books—Non-production of—Necessity—Burden of proof.*

A bad practice has grown in Indian procedure of parties in possession of important documents or information lying by, trusting to the abstract doctrine of onus of proof and failing to furnish the Courts with the best material for decision. Where a mortgage of *mutt* property is attacked as not binding on the *mutt*, if those in charge of the accounts of the *mutt* do not produce them to confirm their statements an inference adverse to them can be drawn from the omission. (*Lord Shaw.*) MURGESAM PILLAI *v.* GNANA SAMBANDHA PANDARA SANNADI.
40 Mad. 402 = 44 I.A. 98 = 21 M.L.T. 288 = 32 M.L.J. 369 = 15 A.L.J. 281 = 1 P.L.W. 457 = 5 L.W. 789 = 21 C.W.N. 761 = 19 Bom. L.R. 456 = 23 C.L.J. 589 = 39 I.C. 659 = (1917) M.W.N. 457 (P.C.).

——S. 114, Illn. (g)—*Non-production of evidence—Adverse inference.*

In appraising the value to be given to conflicting oral testimony the Court ought to attach due weight to the fact that documentary evidence which might have concluded the case one way or another and for the custody of which one of the parties is responsible, has not been brought before it. Such an omission weakens seriously the case of the party who is or ought to be in possession of such evidence. (*Lord Shaw*). RAM PARKASH DAS *v.* ANAND DAS.
43 Cal. 707 = 43 I.A. 73 = 20 C.W.N. 802 = 14 A.L.J. 621 = (1916) 1 M.W.N. 405 = 31 M.L.J. 1 = 18 Bom. L.R. 490 = 3 L.W. 516 = 21 C.L.J. 116 = 33 I.C. 583 = 20 M.L.T. 267 (P.C.).

——S. 114, Illn. (g)—*Accounts—Non-production of—Adverse inference when drawn.*

It is open to a litigant to refrain from producing any documents, not forming part of his case, that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for their production and inspection and to exhibit them as evidence in the cause if he thinks proper. If he does not do so neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents. (*Sir George Farewell.*) MUSAMMAT BILAS KUNWAR *v* DEORAJ RANJIT SINGH.
37 All. 557 = 42 I.A. 202 = 19 C.W.N. 1207 = 29 M.L.J. 335 = 2 L.W. 830 = 18 M.L.T. 248 = 13 A.L.J. 991 = 17 Bom. L.R. 1005 = 22 C.L.J. 516 = 30 I.C. 299 = (1915) M.W.N. 757 (P.C.).

——S. 114, Illn. (g)—*Witnesses—Duty to produce and examine conduct of parties.*

Where the evidence adduced by the plaintiff, if believed, established a strong case which it was incumbent on the defendants to meet by personal denials, and all that they did was to produce evidence on collateral matters the plaintiff was held entitled to a decree. An important witness who according to the plaintiff had carried the plaint jewels to the defendants, for safe custody, ought, *prima facie* to have been called by the plaintiff. But she being a relative of the defendants having left the plaintiff's service only recently and having been summoned by the defendants it was not unnatural that the plaintiff would have left the defendants to call her. (*Lord Robson*) DURGA KUNWAR *v.* MATHURA KUNWAR.
15 C.W.N. 717 = 10 I.C. 968 = 10 M.L.T. 216 (P.C.).

——S. 114, Illn. (g)—*Non-production of documents—Inference.*

Plaintiff kept back certain books and documents relating to the matters in controversy but there had been no 'order for discovery'. *Held*, that the suit could not be dismissed though an adverse inference may be drawn from the non-production of documents. (*Richards*, C.J. *and Piggott*, J.) KISHUN LAL *v.* SULTAN SINGH. **38 All. 5 = 30 I.C. 525 = 13 A.L.J. 831.**

——S. 114, Illn. (g)—*Document not produced on demand—Presumption.*

An account book prepared by plaintiff and relied on by defendant was not produced by plaintiff when demanded by the Court. *Held*, the Court was justified in drawing an inference that it was against the plaintiff. It makes no difference that the plaintiff is minor and the guardian is female. (*Karamat Hussain and Tudball*, JJ.) MATHURI *v.* GURCHARAN. **16 I.C. 25.**

——S. 114, Illn. (g)—*Non-production of document.*

A document though not produced in a previous criminal case between the same parties may be produced in a subsequent suit, but its previous non-production affects its value. (*Teunon and Newbould*, JJ.) SORMAN FAKIR *v.* MOLLA ABDUL AZIZ. **37 I.C. 949.**

——S. 114, Illn. (g)—*Accounts—Suit for—Non-production of accounts—Effect of.*

In a suit for accounts the non-production of account books by the party who has custody of them, justified the presumption under S. 114 (*g*) of the Evidence Act that they have been withheld, because if produced they would have been unfavourable to his case. If he is the plaintiff and is claiming accounts though withholding papers his suit is liable to be dismissed. 13 C.W.N. 696; 19 W.R. 14, Ref. If it is the defendant who is liable to render accounts, the Court will proceed on the footing of the evidence furnished by the

EVIDENCE ACT (I of 1872), S. 114, Illn. (g).

plaintiff, and in doing so may make all reasonable presumptions against him. If the Court is satisfied that the defendant has contumaciously refused or omitted to comply with the order for production of the papers, the Court may enforce obedience by imprisonment or by attachment of property or by both. 7 Cal. 654, Ref. (*Mookerjee and Panton, JJ.*) DEBENDRA *v.* NARENDRA. **24 C.W.N. 110 = 54 I.C. 636 = 30 C.L.J. 417.**

——S. 114, Illn. (g)—*Criminal trial—Prosecution—Omission to examine eye-witnesses.*

Where the prosecution does not call all available eye-witnesses, the Court may properly draw an inference adverse to the prosecution. (*Jenkins and N. Chatterjee, JJ.*) RAM RANJAN ROY *v.* EMPEROR. **42 Cal. 422 = 16 Cr. L.J. 170 = 27 I.C. 354 = 19 C.W.N. 28.**

——S. 114, Illn. (g)—*Omission to examine witness—Pleader—Counsel.*

The presumption in S. 114, Illn. (*g*), applies where a counsel in a case ought to have been called as a witness but is not so called. Where a document is privileged, no adverse inference should be drawn from its non-production. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHAN DAS. **40 Cal. 898 = 23 I.C. 25 = 18 C.W.N. 185.**

——S. 114, Illn. (g)—*Books in plaintiff's possession—Failure to produce them—Presumption—Evidence, secondary.*

In a suit for accounts if plff. being in possession of books fails to produce these, every presumption should be drawn against him and he has no right to ask the Court to take accounts. Plaintiff cannot adduce secondary evidence of them if their loss is not proved and the deft. should not be called upon to give any account. (*Shadi Lal and Dandas, JJ.*) THAKURDAS *v.* GOWRDHAN. **56 I.C. 240.**

——S. 114, Illn. (g)—*Presumption—Criminal trial.*

Where the prosecution fails to produce an important witness the Court can presume that if he were produced his evidence would not be favourable to the prosecution. (*Chevis and Scott-Smith, JJ.*) EMPEROR *v.* AMOLAK RAM. **51 I.C. 679 = 20 Cr. L.J. 519.**

——S. 114, Illn. (g)—*Criminal trial—Witness not produced.*

Where an eye-witness is not produced before the committing Magistrate, the natural presumption is that he would not support the case for the prosecution. (*Chevis and Scott-Smith, JJ.*) KAIMI *v.* EMPEROR. **17 Cr. L.J. 267 = 12 P.R. 1916 (Cr). = 34 I.C. 987 = 39 P.W.R. 1916 (Cr).**

——S. 114, Illn. (g)—*Accounts — Non-production of—Absence of notice.*

No presumption can be drawn against a party for non-production of accounts when the notice to produce them is insufficient. (*Scott-Smith, JJ.*) HARI SHANKER *v.* BABU RAM. **251 P.W.R. 1912 = 18 I.C. 746 = 73 P.L.R 1913.**

EVIDENCE ACT (I of 1872), S. 114, Illn. (g).

——S. 114, Illn. (g)—*Accounts—Non-production of.*

Non-production of account books by the party in possession thereof raises a presumption against him, that if produced they would have been against him. (*Shah Din and Scott-Smith, JJ.*) SHAM DAS *v.* POHLO RAM. **18 P.W.R. 1913 = 18 I.C. 604 = 16 P.L.R. 1912 (Supp).**

——S. 114, Illn. (g)—*Failure to produce evidence.*

If a party fails to produce the best available evidence, (i.e.) his accounts though summoned, the onus of proof shifts on to him, though it initially lay on the other side. So held in a suit by a creditor to enforce a debt of the manager against members of the joint family. (*Wallis, C.J. and Ayling, J.*) GURUSWAMI NADAN *v.* GOPALASWAMI ODAYAR. **42 Mad. 629 = 9 L.W. 547 = 36 M.L.J. 568 = 50 I.C. 775 = (1919) M.W.N. 301.**

——S. 114, Illn. (g)—*Settlement record—Not produced—Presumption against Government.*

Where permanent settlement records in the special knowledge and custody of Government are not produced, a presumption could be raised against the claim of the Government to resume certain lands as having been excluded from assessment at the time of the permanent settlement. (*Sankaran Nair and Tyabji, JJ.*) SRI RAJA PARTHASARATHY APPA RAO *v.* SECRETARY OF STATE FOR INDIA. **38 Mad. 620 = (1913) M.W.N. 959 = 14 M.L.T. 514 = 26 I.C. 871 = 26 M.L.J. 39.**

——S. 114, Illn. (g)—*Suppression of will.*

It may be presumed as against a person who is in a position to produce a will but does not do so, that the will if produced, would be unfavourable to him. But the Courts will not make any presumption as to actual contents of the will or as to the legacies under it and persons claiming the benefit of such provisions must prove them. 25 Mad. 367; 29 I.A. 76 Foll. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) PACHETI SWAMIGADU *v.* YERRAPRAGADA AYAPPARASU. **16 I.C. 815.**

——S. 114, Illn. (g)—*Non-production of accounts.*

If a party persistently omits to produce his books of account there is a justifiable presumption that they do not support his case. (*Drake-Brockman and Findlay, J.C.*) PADAM RAJ *v.* GOPIKISAN. **56 I.C. 129.**

——S. 114, Illn. (g) — *Presumption — Discharge — Mortgage bond produced by mortgagee.*

Where a usufructuary mortgage was executed in 1876 but the mortgagee was not given possession of the property and he did not make

EVIDENCE ACT (I of 1872), S. 114, Illn. (g).

any demand or attempt to enforce the bond until his death and in 1908 the heirs of the mortgagee sued on the bond ; *held*, that under the circumstances it must be presumed that the mortgage was satisfied, notwithstanding the fact that the bond was produced by the plaintiff. 46 I.C. 657 Rel. on. (*Stanyon*, A.J.C.) AMRITABAI *v.* JABBANBI. **46 I.C. 676.**

——S. 114, Illn. (g)—*Collection of rents—Absence of evidence of—Suit for profits.*

If in a suit for profits of land the recorded collections are suspiciously low, and the defendant does not produce evidence to show what was collected, the Court may presume that the full amount of the rents had been collected and the profits assessed on the basis of the gross rental. (*Daniels*, A.J.C.) RAGHUNATH SINGH *v.* HAR DAYAL. **56 I.C. 751=7 O.L.J. 278.**

——S. 114, Illn. (g) —*Account books—Summoned not produced.*

The non-production, by a mortgagee in a suit on a mortgage bond, when the defence was discharge of the debt, of his account books when summoned for by the mortgagor justifies the presumption under S. 114, Illn. (*g*) of the fact that if produced they would have been unfavourable to the mortgagee. The fact that a careful money lender took no steps during his lifetime to recover his money after the amount rose above the value of the mortgaged property, cannot be believed. 32 A. 104 P.C. Ref. to. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) LALTA PERSHAD *v.* MAJID UNNISSA. **25 I.C. 749=1 O.L.J. 426.**

——S. 114, Illn. (g)— *Burden of proof—Defendant's failure to produce accounts raises no presumption in his favour.*

When a plaintiff sues on a contract he must support his case by conclusive proof of the contract to the Court's satisfaction on the plaintiff's failure to prove his case, there can be no presumption that his case would have been supported by certain account books of the defendant, which in fact were not produced by the defendant. 37 A. 557 P.C. Ref. to. (*Mullick and Atkinson*, JJ.) BALDHARI SINGH *v.* BASAR ALI KALAL. **37 I.C. 967.**

——S. 114, Illn. (i)—*Discharge—Presumption—Burden of proof—Production of document with endorsement of payment—Suspicion.*

Suspicion though a ground for scrutiny cannot be made the foundation of decision. The production of a bond with an endorsement of payment casts upon the plaintiff, the obligor, the burden of proving that the debt is still outstanding, *i.e.*, that the bond came into defendant's hands by dishonest means, and that the signatures to the endorsement are either forgeries or unauthorised. (*Mr. Ameer Ali.*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS. **34 All. 511=39 I A. 68=12 M.L.T. 392=15 C.C. 278=14 Bom. L.R. 1073=10 A.L.J. 373=17 C.W.N. 49=16 C.L J. 629=(1912) M.W.N. 1052=17 I.C. 396=23 M.L.J. 741 (P.C.).**

EVIDENCE ACT (I of 1872), S. 114, Illn. (i).

——S. 114, Illn. (i)—*Discharge—Mortgage deed produced by mortgagor—Presumption—Payment—Onus.*

Where the mortgagor produces the mortgage document from his custody the presumption is that the bond has been discharged and the onus is on the mortgagee to prove that it was not. 34 A. 511 Dist. P.C. (*Banerjee and Ryves*, JJ.) BINAYAK RAO *v.* DINKAR RAO. **20 I.C. 308.**

——S. 114, Illn. (i)—*Lost documents—Loss not proved—Scope of the section.*

Where a mortgage document was lost which was relied on by one party for certain payments made by him which were endorsed upon the document and where the other party was not able to prove the loss, it was *held*, that the presumption under S. 114 as regards lost documents could not be used in favour of the party relying upon it. (*Karamat Hussain and Chamier*, JJ.) QUADRAT ULLAH *v.* CHUNI MAL. **13 I.C. 60.**

——S. 114, Illn. (i)—*Burden of proof—Suit on mortgage bond—Bond in possession of defendant.*

When in a suit on a mortgage bond the defendant produces the original of the mortgage bond with the endorsement of payment, the burden is cast on plaintiff of showing that the debt is outstanding. (*Batchelor*, A.C.J. *and Shah*, J.) RAOJI FAKIRA *v.* DAGDU HANMANTA MAHAR. **41 Bom. 23=36 I.C. 562=18 Bom. L.R. 779.**

——S. 114, Illn. (i)—*Discharge—Bond produced by the defendant—Endorsement of discharge absent.*

Illustration (i) to S. 114 of the Evidence Act only refers to presumptions that may be raised. It does not follow that such presumptions would shift the onus of proof. Where in a suit on a mortgage the defendant pleaded discharge and produced the bond, but there was no endorsement of discharge written thereon and the person through whom the money was said to have been paid was not examined, the Lower Courts were right in holding that the mere production of the bond was not enough to shift the burden of proving the discharge which lay on the defendant. 34 A. 511 P.C. Dist. (*Seshagiri Aiyar*, J.) *In re* PARA THURINJI. **2 L.W. 601=13 M.L.T. 94=30 I.C. 258=(1915) M.W.N. 638.**

——S. 114, Illn. (i)—*Discharge—Production of mortgage bond by mortgagor—Presumption.*

The production of the mortgage bond by the mortgagor is presumptive evidence that the debt has been paid off. (*Sadasiva Aiyar and Tyabji*, JJ.) APPAVU CHETTIAR *v.* NARAYAPPA GOUNDEN. **14 M.L.T. 117=20 I.C. 792=25 M.L.J. 329.**

——S. 114, Illn. (i)—*Discharge—Document in the custody of mortgagor.*

Where defendant pleads discharge of a mortgage and the document is found to have

EVIDENCE ACT (I of 1872), S. 114, Illn. (i).

been tampered with and is in possession of the mortgagor, and the mortgagee is not able to account satisfactorily for the mortgagor's possession, the Court would be entitled to draw a .presumption of discharge. But still the presumption is liable to be rebutted. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) HABIB MAHOMED MARKAYAR *v.* MUTHU VELAN.
16 I C. 439.

———S. 114, Illn (i)—*Lost bond—Payment pleaded—Presumption.*

If a plaintiff sues for money due upon a bond and alleges its loss, and the defendant admits execution but pleads payment, the defendant must prove payment, either by the production of the bond or by other evidence or both; and if the defendant does not produce the bond, the question of its loss is only material in so far as it may raise a presumption one way or other under S. 114. (*Kanhaiya Lal*, A.J.C.) JAGANATH *v.* KAMTA SINGH. 32 I.C. 349 = 2 O L.J. 498.

———S. 114, Illn. (i)—*Discharge—Bond in possession of obligor—Presumption.*

If a document creating an obligation is in the hands of the obligor the obligation may be presumed to be discharged but the Court should consider, that though the bond is in the possession of the obligor under the circumstances of the case, he may have stolen it. (*Chamier*, C.J. *and Sharfuddin*, J.) KISHUN CHAND *v.* MASAFIR MISTRY.
3 P.L W. 335 = 39 I C 855 = (1917) Pat. 186.

———S. 114, Illn. (i)—*Original deed bearing the endorsement of payment produced by defendant—Presumption.*

Where a defendant produced the original bond of mortgage with an endorsement of payment, it was for the plaintiff to prove that the debt was still outstanding. (*Roe*, J.) MADAN MOHAN *v.* ETWAR CHAND.
36 I.C. 562.

———S. 114, Illn. (i)—*Discharge—Pro-note in the hand of maker—Presumption.*

If the pro-note is in the hands of the maker thereof there is a presumption that it has been paid off. If the drawee alleges that the maker came into possession of the note unlawfully the onus is on him to prove it. (*Ormond*, J.) AUNG MYAT *v.* HLA MAY. 10 L.B.R. 23 = 52 I C. 660 = 12 Bur. L T. 116.

——— S 115.

ACQUIESCENCE.
ADMISSION.
ATTESTATION.
CONDUCT.
CONSENT, DECREE OR ORDER.
CRIMINAL LAW.
DIFFERENT SUBJECT.
EQUITABLE ESTOPPEL.
ESTOPPEL AGAINST ESTOPPEL.
EXECUTOR.

EVIDENCE ACT (I of 1872), S. 115—Acquiescence.

EXECUTION SALE.
FRAUD.
ILLEGALITY.
INCONSISTENT PLEAS.
JUDGMENT.
LACHES.
LANDLORD AND TENANT.
LICENSOR.
MINOR.
MORTGAGOR.
NONE AGAINST STATUTE.
NONE IF TRUTH KNOWN.
NOT EXHAUSTIVE.
OMISSION.
PARTIES AND PRIVIES.
PART PERFORMANCE.
PLEADINGS.
PUBLIC POLICY.
REPRESENTATION.
RIGHT TO APPEAL.
TRUSTEE.
VENDOR AND PURCHASER.
WAIVER—ESTOPPEL.
MISCELLANEOUS.

Acquiescence.

——S. 115—*Acquiescence.*

Where a person objected to another putting up a structure on his land and objected before the Municipal authority who however refused to go into a question of title, he cannot in any sense be held to have acquiesced in the act. 21 All. 496 (P.C.) Foll. (*Gokul Prasad*, J.) MT. KOKLA KUMAR *v.* KALIAN MAL.
1923 All. 452.

———S. 115—*Acquiescence—Landlord and tenant—Erection of structures—Demolition.*

To raise a plea of estoppel against a landlord seeking to demolish structures erected by a tenant, it is not enough for the tenant to show that the landlord stood aside and allowed the structures to be erected. One of the essential elements of equitable estoppel is that the person who sets up that estoppel must have acted in good faith and must have been under the belief that he had a right to put up the buildings. Where the buildings in dispute have been in existence for a long period and certainly for over 12 years and the landlord has been aware of their erection and kept quite all along, he cannot turn round and claim to demolish the buildings so erected. (*Lindsay*, J.) MUSSAMMAT DULARI KOER *v.* SALIG RAM.
4 U.P.L.R. (A.) 82 = 1922 All. 210.

———S. 115—*Acquiescence — Acts on one basis.*

Where the correspondence between the parties showed that they proceeded on the assumption that the plaintiff was entitled to exercise a certain right the defendants who have acquiesced in it, were estopped from disputing it. (*Kajiji*, J.) LADHABAI *v.* SIR JAMSETJI JIJIBHAI. 42 Bom. 108 = 42 I.C. 882 = 19 Bom. L.R. 813.

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———S. 115 — *Acquiescence—Mines—Working of, by co-sharer.*

Where a co-sharer knowing that a lessee from anothor sharer was spending large sums of money to develop the mine, did not promptly come in with his claim for an account of the profits, his claim after long time could be barred by acquiescence. (*Fletcher and Shamsul Huda*, JJ.) BENGAL COAL COMPANY, LTD. *v.* MONORANJAN BAGCHI. **44 I.C. 297 = 22 C.W.N. 441.**

———S. 115—*Acquiescence—Laches—Effect of.*

There is a distinction between a case where the acquiescence alleged occurs while the act acquiesced is in progress, and another where acquiescence takes place after the act has been completed. In the former case, the acquiescence is proof of assent. In the latter case, when the act is completed without any knowledge or without any assent on the part of the person whose right is infringed the matter must be determined on very different legal considerations. A right of action has then vested in him, and mere delay to take legal proceedings to redress the injury cannot by itself, constitute a bar to such proceedings unless the delay on his part, after he has acquired full knowledge, has affected or altered the position of his opponent. A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged waiver he is shown to have been fully cognisant of his right and of the facts of the case. (*Mookerjee and Chapman*, JJ.) SHYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI GUPTA.
19 C.W.N. 882 = 30 I.C. 161 = 21 C.L.J. 557.

———S. 115 — *Acquiescence — Knowledge essential.*

The mere fact that the accounts of the Administrator *pendente lite* were passed and the plaintiff raised no objection, would not operate as an estoppel. Acquiescence cannot be imputed where there is no evidence that the plaintiff knew the facts as represented to be incorrect or that he did not rely on the representation. (*Jenkins*, C.J. *and Woodroffe*, J.) OSMAND BEEBY *v.* KHITISH CHANDRA. **41 Cal. 771 = 25 I.C. 284 = 18 C.W.N. 681.**

———S. 115—*Acquiescence—Silence — Sale of joint property by one of three brothers—Other brothers standing by for years and allowing vendee spend large sums on building.*

Where one of three brothers sold ancestral property and the other brothers with knowledge of the sale kept quiet while the vendee was spending moneys in building on the land sold: *Held*, that the plaintiffs' long silence coupled with the fact that they knew all along of the building operations and abstained from asserting their own rights, showed that they acquiesced in the sale and that they were consequently estopped from asserting those

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rights in a suit. 177 P.W.R. 1911, 13 Bom. L.R. 164, 19 Cal. W.N. 882; 39 P.W.R. 1910, Foll. 20 C.W.N. 657; 9 All. 434; 16 All. 328; 21 All. 496 (P.C.), Ref. (*Broadway and Harrison*, JJ.) DHANPAT RAI *v.* GURANDITTA MAL. **2 Lah. 253 = 64 I.C. 520 = 10 P.L.R. 1923.**

———S. 115—*Acquiescence—Hindu reversioner—Widow's act.*

A widow allowed an occupancy tenant to exchange one of his occupancy fields with a non-occupancy one. Plaintiff who was one of the collaterals of the last male holder and a lambardar did not object to the exchange but affixed his seal to the patwari's report at the time of mutation. Subsequently the occupancy tenants sank a well in the field obtained by him under the exchange but the plaintiff did not object. Six years after the exchange he sued for a declaration that the exchange would not affect his reversionary right. *Held*, that the plaintiff having acquiesced in the exchange and having failed to object to the sinking of the well was estopped from objecting to the exchange. (*Abdul Raoof*, J.) ILLA-UD-DIN *v.* AMIR-UL-LAH. **56 I.C. 874 = 2 U.P.L.R. (L) 105.**

———S. 115—*Acquiescence — Knowledge of transaction—Estoppel.*

In a suit by a reversioner for recovery of properties alienated by his father it was found that he was aware of the sale, that he was present at the time of its execution and registration and that he took no steps to question the sale for more than 11 years. *Held*, that there was an estoppel by title barring the plaintiff's claim. (*Broadway*, J.) SHER KHAN *v.* ALAF KHAN. **42 I.C. 391.**

———S. 115—*Acquiescence—Sale by father—Building by alienee—Son's silence.*

The vendor's son stands by, while the land sold by his father is being built upon by the vendee and sues for possession 11 years after the sale on his father's death saying that the sale was without necessity and consideration. *Held*, the son was estopped, on the ground of acquiescence from contesting the alienation. (*Shah Din and Chevis*, JJ.) GOBICHAND *v.* RAM CHAND. **12 I.C. 729 = 177 P.W.R. 1911.**

———S. 115—*Acquiescence — Building on land without title—Silence.*

Wallis, C.J.—If a man builds a house partly on his neighbour's land and the neighbour acquiesces, Courts of Equity will interfere to prevent him from disturbing the house when completely finished. *Seshagiri Aiyar*, J.—The principles of equitable estoppel can apply to only executory contracts and not to executed contracts. Where title can be acquired only in a particular way there is no room for the application of the doctrine of estoppel. S. 115 of the Evidence Act does not apply to cases where two parties exchange plots by means of an unregistered agreement and one party on

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the ground of non-registration seeks to get back possession of his land after it had been built upon by the other. 42 C. 801 P.C., Exp. (*Wallis*, C J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* RAMASWAMI CHETTY.
30 M.L J. 1=19 M L.T. 114=32 I C. 5=(1915) M.W.N. 1048.

[Opinion of Seshagiri Aiyar, J., upheld in 40 Mad. 1134=43 I.C. 188=33 M.L.J. 253].

———S. 115—*Acquiescence— What constitutes.*

Mere acquiescence or absence of interference on the part of daughter who claimed a share in the property would not amount to a consent which the section requires. (*Lindsay*, J.C.) BADRUNNISSA *v.* RAM BAHAROSE.
55 I.C. 878=7 O.L.J. 78.

———S. 115—*Acquiescence—Tenant building on land—Knowledge of landlord—Ejectment.*

An under-proprietary tenancy for life without power of alienation was granted to a person by a superior proprietor. The grantee died, but the superior proprietor did not enforce the reversion but allowed a trespasser to assert that title and continue to pay the under-proprietary rent. On the faith of the trespasser being treated and recognised as an under-proprietor he did acts which were to the advantage of the superior proprietor. *Held*, the superior proprietor was estopped from denying the right of the trespasser to hold the property in question as an under-proprietor for life without power of alienation. (*Kanhaiya Lal and Daniels*, A J.Cs.) MUSSAMMAT JANKI KUNWAR *v.* MITRA SEN SINGH.
54 I.C. 901=6 O L J. 696.

———S. 115—*Acquiescence—Knowledge of facts essential—Pre-emption.*

In a pre-emption suit if estoppel by acquiescence as distinct from that by the prescribed notice is pleaded, it must be proved that the pre-emptor had full knowledge of what was going on and not merely the knowledge that there was a proposal to sell the property to some one or another for a certain price. (*Lyle and Ashworth*, JJ.) HANUMAN SINGH *v.* ADIYA PRASAD. **54 I.C. 520=22 O.C. 323.**

———S. 115—*Acquiescence — Building on trespassed land.*

Where a person builds upon lands on which he has trespassed, the true owner is under no obligation to interfere with such building and the trespasser cannot plead that the owner is estopped by his acquiescence. (*Kanhaiya Lal*, J.C.) PADDU *v.* MAHABIR PRASAD
53 I C. 683=6 O.L J. 455.

———S. 115— *Acquiescence—Landlord and tenant*—Dihdari *lands—Suit by superior proprietor.*

Where a *dihdar* has been to the knowledge of the previous superior proprietors of the village in which the suit plots were situated,

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enjoying and mortgaging his *dihdari* rights for more than 12 years prior to the suit, the present superior proprietor cannot question the *dihdar's* under-proprietary rights. 8 O.C. 145, Dist. (*Kanhaiya Lal*, A.J.C.) KISHUN *v.* SHYAM SUNDAR. **35 I.C. 441=19 O.C. 27.**

———S. 115—*Acquiescence—Erroneous proceedings.*

If parties consent to a course not strictly in accordance which the procedure prescribed by the rules and do not object to it, they are not entitled to turn round afterwards and seek to get some benefit from the failure to abide by the procedure in the same way as if they had objected at the start or if they had no notice of it. (*Miller*, C.J. *and Roe*, J.) RATNAKAR GOUNTIA *v.* CHAMRA SATPASTY.
51 I.C. 881=4 P L J. 357.

———S. 115 — *Acquiescence — Trespasser building upon another's land—Building with knowledge of defective title.*

An owner can insist on having back his land with all the additional value which a stranger had imprudently added to it knowing that he is not the owner. (*Chapman and Atkinson*, JJ.) STOCKING B. *v.* TATA IRON AND STEEL COY.
3 P.L.W. 133=2 P.L J. 600=41 I.C. 175=(1917) Pat. 273.

———S. 115— *Acquiescence — Laches — Difference between.*

Where there is a statute of limitation the objection of simple laches does not apply until the expiration of the time allowed by the statute. But acquiescence is a different thing; it means more than laches. If a party who could object stands by and knowingly permits another to incur an expense in doing an act under the belief that it would not be objected to and so a kind of permission may be said to be given to another to alter his position, he may be said to acquiesce. (*Maung Kin*, J.) APPAN CHARAN *v.* KYSE MA. **41 I.C. 722=11 Bur. L.T. 150.**

———S. 115—*Acquiescence—When creates an estoppel.*

Acquiescence after execution of a deed by a third party does not give rise to estoppel. There is a great difference between acquiescence in an act still in progress, and mere submission to it after it has been done, as such submission cannot change the past. (*Hartnoll*, O.C.J. *and Twomey*, J.) RATHNA PILLAI *v.* N. P. FIRM. **7 Bur. L T. 88=24 I C. 60=7 L B.R. 301.**

Admission.

———S. 115—*Admission of adoption in documents—Effect.*

Execution of a registered document declaring the adoption of another, and in mutation proceedings, description as the guardian of such adopted son and a compromise entered into wherein for valuable consideration, all intention of repudiating such adoption was given up,

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operate as an estoppel and the person cannot allege that there was no adoption. (*Rafique and Piggott*, JJ.) KUNWARI UDIT NARAYAN SINGH *v.* DIVAN RANDHIR SINGH.
L. R. 3 A. 642.

———S. 115—*Admissions—Trustee, naming a certain person to be appointed as his substitute —Right to impeach appointment.*

The mere fact that the trustee named a certain person to be appointed as Receiver, would not prevent him from questioning the appointment on appeal, though his objection to the appointment of a Receiver is disallowed. (*Piggott and Walsh*, JJ.) MAHAMAD ASKARI *v.* NISAR HUSAIN. **43 All. 311 = 60 I.C. 901 = 19 A L J. 50.**

———S. 115—*Admissions—Compromise of previous litigation—Fraud.*

Where in pursuance of a compromise of disputed claims the defendant acknowledged the title of the plaintiff, they could not set up their fraudulent lease from a third person against plaintiff's interest in the land which was admitted and recognised by the compromise. (*Fletcher*, J.) SRIRAM CHANDRA *v.* DHARAM DHAR GHOSE. **55 I.C. 463.**

———S. 115—*Admissions—Waiver—Knowledge of right.*

Where certain properties were not the subject of an arbitration award between the parties but the plaintiff subsequently sued for partition, *Held*, that waiver of plaintiff's right could not be inferred from plaintiff's omission to give evidence and explain when and how he came to know that the property was joint. In the absence of evidence that at the time of the arbitration, plaintiff knew the property was joint, his admission would not amount to waiver. Being gratuitous it did not create an estoppel. (*Wilberforce and Martineau*, JJ.) MANOHAR LAL *v.* NANAK CHAND. **52 I.C. 503 = 68 P.R. 1919.**

———S. 115—*Admissions—Former suit—Estoppel.*

A person stating in a former suit that an alienation by him may be treated as sale, does not debar him from pleading that it was a mortgage in a subsequent suit for pre-emption. (*Martineau*, J.) TAKAYA RAM *v* WASSU MISSER. **50 I.C. 564.**

———S. 115 — *Admissions — Value of evidence.*

A mere admission of the right of one party by the other in a previous case between the same parties does not create an estoppel. But it is a strong piece of evidence against the person making such admission. (*Scott-Smith and Jones*, JJ.) SULTAN *v.* GHULLA.
68 P.W.R. 1917 = 41 I.C. 289 = 139 P.L.R. 1917.

———S. 115—*Admissions—Estoppel.*

A party or person claiming through another who has made a statement in a previous case

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is not estopped in the subsequent case from proving that the admission in that statement was mistaken or untrue unless some other person has been induced by them to change his position. 29 A.L.J. 84 (P.C.) Ref. to. (*Kanhaiya Lal and Kendall*, A.J.Cs.), SURAJ BAKHSH *v.* CHHAB KUAR. **26 I.C. 98 = 1 O.L.J. 532.**

———S. 115—*Admissions—Estoppel.*

An admission by X in a deed of compromise of the right of Y to enjoy certain property in lieu of maintenance does not amount to an inducement to third persons that Y has a good title to the land so that when X impugns the validity of the compromise, a transferee from Y cannot set up the admission as estopping X from claiming the land. (*Mullick and Atkinson*, JJ.) BALVADRU SAMANT SINGH *v.* BIMBADHAR ROY. **1 P.L.J. 509 = 38 I.C. 343 = 2 P.L.W. 396.**

———S. 115—*Admissions—Pleader—Trial.*

A party to a suit cannot dispute the correctness of his pleader's admission for the purpose of dispensing with further proof. (*Pratt*, J.C. *and Crouch*, A.J.C.) VISHUNDAS *v.* MUNICIPALITY OF HYDERABAD. **34 I.C. 494 = 9 S.L.R. 220.**

Attestation.

———S. 115—*Attestation—Effect of—Not an estoppel.*

Attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution of the deed. It conveys neither directly nor by implication, any knowledge of the contents of the documents. To operate as estoppel, the signature must be shown by independent evidence to have been meant to involve consent to the transaction. (*Lord Buckmaster.*) PANDURANG KRISHNAJI *v* MARKANDEYA TUKARAM. **42 M.L.J. 436 = 26 C.W.N. 201 = 18 N.L.R. 1 = 30 A L J. 305 = 5 N L J. 6 = 15 L W. 486 = 35 C L J. 409 = 30 M.L.T 249 = 24 Bom. L.R 357 = 49 I A. 16 = 1922 P.C. 20 (P.C.).**

———S. 115—*Attestation is not consent.*

The mere fact of attestation does not raise any presumption that the attesting witnesses were aware of the contents of the document, and hence a plea of estoppel cannot be founded on the fact alone. (*Stuart and Sulaiman*, JJ.) UDAI BHAN SINGH *v.* GAJENDRA SINGH.
1923 All. 28.

———S. 115—*Attestation—Entries in* Khewat *as mortgagees.*

Where the defendants had been shown in a *Khewat* as mortgagees in possession of certain lands which they had attested, the Court had power of drawing an inference of fact from such evidence, which, if unrebutted would estop the defendant. (*Walsh*, J.) PAKARIA *v.* RANJITA. **35 I.C. 165.**

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———S. 115—*Attestation—Estoppel.*

A reversioner is estopped from contesting the validity of an alienation by reason of his having signed a deed of exchange of the disputed property. (*Scott-Smith*, J.) GANDA SINGH *v.* GULAB SINGH. 66 P.W.R. 1914= 25 I.C. 724=169 P.L.R. 1914.

———S. 115—*Attestation by person interested—Whether amounts to representation.*

The question whether an attestation by a person interested amounts to representation is a question of fact depending on the nature of particular case. (*Miller and Abdur Rahim*, JJ.) SUBRAMANIAM CHETTI *v.* DORAI SINGH TEVAR. 24 M.L.J. 49=16 I.C. 943= (1913) M.W.N. 365.

———S. 115—*Attestation—Representation.*

To give rise to estoppel no actual representation is necessary. 20 C. 296 (P.C.) Ref. It need not be verbal. It is quite enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. Attestation may in certain cases create an estoppel. If the auction-purchaser allows another to remain in possession for a long time and attests a sale-deed by him, his conduct estops him from claiming the benefit under S. 317 of C.P. Code of 1882. Per *Sadasiva Aiyar*, J.—Estoppel does not give rise to a cause of action but is only a bar to defendant's plea in answer to the action. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KANDASAMI PILLAI *v.* RANGASWAMI NAINA. 36 Mad. 564= 23 M.L.J. 301=12 M.L.T. 211= 16 I.C. 30=(1912) M.W.N. 882.

———S. 115—*Attestation—Hindu widow—Reversioner.*

Where the heir of any deceased Hindu deliberately allows the widow to hold herself out as a true owner and attests the mortgage-deed in proof of his consent, he cannot be allowed to resile from that position and deprive the mortgagee of the money advanced on the faith of that representation as he is estopped from setting up the invalidity of the mortgage. 20 Cal. 296, Ref. (*Kanhaiya Lal*, A.J.C.) GAJADAR LAL *v.* GHULABA. 30 I.C. 388= 2 O.L.J. 368.

———S. 115—*Attestation—Effect of.*

The mere attestation of a deed does not estop the attestor from claiming his title unless it is established that he had full apprehension and knowledge of the contents of the document and that in some way or other it was signed with a view to affect his interest in the properties in suit covered by it. (*Miller*, C.J. *and Mullick*, J.) KANHU LAL MARWARI *v.* PALU SAHU. (1920) Pat. 305= 2 U.P.L.R. (P.) 171=5 P.L.J. 521= 57 I.C. 353=1 P.L.T. 546.

———S. 115—*Attestation—Effect of.*

There is no estoppel against a person challenging a sale merely because he took an active part in bringing about the sale and attested it. (*Fawcett and Crump*, A.J.Cs.) SHAHAB UDDIN *v.* VOHIDBUX. 56 I.C. 492= 14 S.L.R. 12.

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Conduct.

———S.115—*Conduct—Transferor disclaiming transfer.*

If a person holding a full proprietary interest under a sanad from the Government has disposed of that property. No suit for re-possession of the property so granted can be maintained. (*Lord Shaw*) GANPAT *v.* LALAMIYA. 12 L.W. 574=36 I.C. 673= 16 N.L.R. 59 (P.C.).

———S. 115—*Conduct—Hindu reversioner—Consent to alienation by widow.*

A Hindu reversioner taking mortgage from an alienee from a Hindu widow is not estopped from disputing validity of the alienation after death of widow. (*Lord Dunedin*) RANGASAMI GOUNDAN *v.* NACHIAPPA GOUNDAN. 42 Mad. 513=16 M.L.J. 493= 17 A.L.J. 536=29 C.L.J. 539= 21 Bom. L.R. 640=23 C.W.N. 777= (1919) M.W.N. 162=26 M.L.T. 5= 10 L.W. 105=50 I.C. 498=46 I.A. 72 (P.C.).

[On appeal from 16 I.C. 757= 28 M.L.J. 1 which itself was on appeal from 25 M.L.J. 8.]

———S. 115—*Conduct—Hindu reversioner—Conveyance by widow—Reversioner joining in conveyance.*

Where a purchaser from a Hindu widow is aware of the limited powers of vendor a reversioner who joins in the conveyance by the widow is not estopped from claiming properties on the death of limited owner if the alienation was not for a justifying necessity. The doctrine of title feeding the estoppel is inapplicable. (*Mr. Ameer Ali.*) GUR NARAYAN *v.* SHEO LAL SINGH. 45 Cal. 566= 28 C.W.N. 521=1 U.P.L.R. (P.C.) 1= 17 A.L.J. 66=35 M.L.J. 68= 49 I.C. 1=9 L.W. 335 (P.C.).

[On appeal from 7 I.C. 218.]

———S. 115—*Conduct—Hindu reversioner—Compromise of disputes with widow—Taking benefit—Estopped from claiming estate.*

On the death of a Hindu leaving a widow and a daughter his sister's son (the appellant) and other members of the family disputed the right of the widow of the deceased to succeed to the property left by him. The appellant was a party to a compromise of these disputes made in 1892 by which the property was immediately divided. He did not himself take a share under the compromise, but he was thereby recognised as the adopted son of a brother of the deceased whose widow took a share. In 1898 the appellant obtained by relinquishment possession of the share of the property allotted thereby to her. In 1912 the

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widow of the original holder died, and the appellant and his brother claimed the entire property as reversioners: *Held*, that the appellant having entered into and taken the benefit of the compromise was precluded from claiming as reversioner. 31 B. 165, Dist. (*Sir John Edge.*) KANHAI LAL *v.* BRIJ LAL.

40 All. 487=22 C.W.N. 914=8 L.W. 212=24 M.L.T. 23=35 M.L.J. 459=16 A.L.J. 825=(1918) M.W.N. 709=28 C.L.J. 394=5 Pat. L.W. 294=20 Bom. L.R. 1048=47 I.C. 207=45 I.A. 118 (P.C.).

———S. 115—*Conduct—Mortgage—Priority—Waiver.*

A prior mortgagee waiving his priority as against one item of the mortgaged property is not estopped from enforcing it against the remaining items. (*Sir John Edge.*) PADARATH HALVAI *v.* RAM NARAIN UPADIYA.

37 All. 474=42 I.A. 163=18 A.L.J. 809=19 C.W.N. 991=17 Bom. L.R. 617=18 M.L.T. 85=2 L.W. 639=29 M.L.J. 159=22 C.L.J. 165=30 I.C. 865=(1915) M.W.N. 709 (P.C.).

———S. 115—*Conduct — Withdrawal of application—Reference—Award.*

Where one of the applicants withdrew his application for revision of the order of dismissal of his suit based on a certain award, he is not precluded from challenging the award especially where the Court held that the reference to the arbitration was bad. (*Mr Amser Ali*) PADMAN *v.* HANWANTA.

93 P.R. 1915=18 M.L.T. 84=19 C.W.N. 929=13 A.L.J. 801=17 Bom. L.R. 609=2 L.W. 645=(1915) M.W.N. 500=22 C.L.J. 172=110 P.W.R. 1915=29 M.L.J. 307=39 I.C. 807=11 P.L.R. 1916 (P.C.).

———S. 115—*Conduct — Adoption—Hindu widow—Assertion of authority from husband and adoption of a boy—Subsequent treatment as adopted son—Widow estopped from denying adoption—Estoppel personal.*

Where a Hindu widow asserted in the most solemn manner under her hand and seal her husband's authority to adopt a son, and in pursuance of such authority adopted a boy from another family executed a deed of adoption in his favour brought him up as her son, married him suitably and after some time sued for a declaration that the adoption was invalid owing to want of authority from her husband. *Held*, that though the authority was oral and its precise terms could not be ascertained, the widow was estopped by her conduct and declarations from alleging want of authority, and further, that the same evidence showed that the authority was not exhausted by two prior adoptions. The estoppel of the widow would only be personal

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to her and not bind the reversioners. (*Lord Robinson.*) DHARAM KUNWAR *v.* BALWANT SINGH.

34 All. 398=39 I.A. 142=16 C.W.N. 675=9 A.L.J. 730=14 Bom. L.R. 485=(1912) M.W.N. 64=12 M.L.T. 95=16 C.L.J. 60=15 I.C. 673=23 M.L.J. 200 (P.C.).

———S. 115—*Conduct.*

Where a person gets another's name recorded as owner of a moiety of the property, and on the faith of that, another purchases it at an auction-sale, the former cannot later on claim ownership of the same. (*Ryves and Daniels, JJ.*) MATHURA PRASAD *v.* ANANDI KUNWAR.

21 A.L.J. 498=L.R. 4 A. 565=1924 All. 63.

———S. 115—*Conduct—Agreement regarding division of property—Enjoyment of benefit thereunder—Effect of.*

Where an agreement relating to division of family properties is entered into and the parties enter into possession of the properties allotted and occupy it for a long time, they are estopped from setting up their independent rights *dehors* the agreement and from denying the rights of the other parties. (*Ryves and Gokul Prasad, JJ.*) BAHADUR SINGH *v.* RAM BAHADUR.

45 A. 277=21 A.L.J. 140=L.R. 4 All. 105=1923 A. 204.

———S. 115—*Conduct—Compromise—Title—Recognition of—Proceedings under S. 145.*

A dispute under S. 145, Cr. P. Code, relates only to the possession of the properties and consequently a compromise of the proceedings does not estop a party from denying the title of the other. (*Banerji and Gokul Prasad, JJ.*) GOPI DAS *v.* MADHO LAL.

20 A.L.J. 932=45 A. 162=1923 All. 77.

———S. 115—*Conduct—Admission of adoption in documents—Effect.*

Where a person executed a registered document declaring he had adopted another, and in mutation proceedings described himself as the guardian of such adopted son and even entered into a compromise wherein for valuable consideration he gave up all intention of repudiating such adoption, he would be estopped from alleging there was no adoption. (*Raflque and Piggott, JJ.*) KUNWAR UDIT NARAYAN SINGH *v.* DIVAN RANDIR SINGH

20 A.L.J. 955=1923 All. 58.

———S. 115—*Conduct—Right to easement.*

Where the plaintiff by his conduct permitted the defendants to believe that they would have the right to use the water of the well of the plaintiff and the defendants relying upon the permission had acted upon the belief that they would be entitled to that right the plaintiff was estopped from denying the rights of the defendants under S. 115, Evidence Act. (*Shah and Hayward, JJ.*) ANANTA MURARAO *v.* GANU VITHU.

22 Bom. L.R. 415=37 I.C. 153=45 Bom. 80.

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——S. 115—*Conduct—Judicial order—Party taking benefit of, estopped from impeaching it.*

Where a party has adopted an order of the Court, and acted under it he cannot after he has enjoyed a benefit under the order, contend that it is valid for one purpose and invalid for another. The plaintiff appealed against the decree in so far as it disallowed compound interest. After the appeal had been filed, against that part of the decree which disallowed compound interest he accepted the costs (deposited by the respondent) and which was decreed by the lower Court on the basis of simple interest as to which there was no dispute and which the plaintiff would have got in any event whether the appeal succeeded or failed. *Held*, in these circumstances the principle of estoppel did not apply to the present case and the plff. could prosecute the appeal. (*Chatterjee and Cuming*, JJ.) JOGENDRA NATH BANERJI *v.* KHODA BUKSHA BISWAS. **72 I.C. 854.**

——S. 115—*Conduct.*

Where S. in conjunction with his deceased brother's wife executed a mortgage alleging in the deed family necessity, and title to deal with whole property, but subsequently when the shares of the deceased members of the family came to him by inheritance is estopped from setting up a claim against the mortgagee and his representative on the ground that they were aware of the true state of things. (*Greaves and Ghose*, JJ.) SARODA PRASAD *v.* GOSTO BEHARI HAZRA. **27 C.W.N. 943 = 36 C.L.J. 78 = 1922 Cal. 542.**

——S. 115—*Conduct—Hindu joint family—Father*—Benami *transfers—Sons recognising transaction.*

Where in a joint Hindu family consisting of the plaintiffs and their father, the latter as manager of joint family properties entered into several *benami* transactions for the purpose of saving a portion of the estate from the hands of a mortgagee execution-purchaser, and being accepted by plaintiff on that footing, rights had sprung up, based on those transactions. *Held*, that plaintiffs having accepted the transactions entered into by the head of the family, they were bound. (*Chatterjee and Duval*, JJ.) SADHAN CHANDRA *v.* NANDA PRASAD SINGH. **55 I.C. 222.**

——S. 115—*Conduct—Execution sale—Deposit by transferee—Withdrawal of deposit—Landlord cannot dispute title of transferee of holding.*

A landlord who withdraws the amount deposited by the transferee of a non-transferable holding to set aside its sale under S. 310-A of the C.P. Code of 1882 without raising any objection cannot maintain afterwards that the transferee had not from his purchase a good title to the holding. 6 C.L.J. 601, Foll. (*Mookerjee and Beachcroft*, JJ.) GADADHAR GHOSH *v.* MIDNAPUR ZAMINDARY CO., LTD. **43 I.C. 742.**

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——S. 115—*Conduct—Will—Hindu widow—Estoppel, whether arises by accepting an invalid will by a Hindu widow.*

Where a testatrix disposed of her woman's estate by a will to her daughter with some allowance to her son, the fact that the son accepted the will does not amount to an estoppel and preclude him or his son from disputing the title of the daughter under a will. (*Teunon and Sheepshanks*, JJ.) DURGADAS KHAN *v.* ISHAN CHANDRA DEY. **39 I.C. 228 = 44 Cal. 155.**

——S. 115—*Conduct—Landlord and tenant—Purchaser of non-transferable holding under a mortgage decree—Paying amount of subsequent rent decree against recorded tenants—No notice to landlord of the payer's interest—Landlord not estopped from disputing the payer's interest.*

The mere fact that the landlord withdraws the deposit of the amount of his rent-decree, made by the plaintiff purchaser of a non-transferable holding in execution of his own mortgage decree, to prevent a sale of the holding by the landlord in execution of his rent decree against the recorded tenants (obtained subsequent to the purchase by the plaintiff under his mortgage decree) does not estop the landlord from disputing the plaintiff's right, in the absence of any notice as to the plaintiff's interest in the holding. (*Chitty and Walmsley*, JJ.) BHARAT CHANDRA GALAI *v.* PRAMATHA NATH ROY. **34 I.C. 337.**

——S. 115—*Conduct—Landlord and tenant.*

Where a landlord-mortgagee of the holding sues his mortgagee, he is estopped from questioning the validity of a prior mortgage of the holding on the ground of its non-transferability and that it was effected without his consent. (*Woodroffe and Chaudhuri*, JJ.) NATABAR SARKAR *v.* NATABAR MANDAL. **33 I.C. 112.**

——S. 115—*Conduct—Mortgage by two, as co-owners—Mortgagor, if can question title of co-mortgagor.*

If A and B jointly mortgage to X a property which stands in their names on the allegation that they are proprietors in respect of the shares for which they are registered, it is futile for A or his successor to contend subsequently as against X or his representative, that B had no title to the property and that A was the sole owner. 11 B.L.R. 46; 19 W.R. 292; 22 Cal. 909, Ref. (*Mookerjee and Beachcroft*, JJ.) BALDEO NARAIN JHA *v.* BHAYA LAL SINGH. **30 I.C. 47 = 21 C.L.J. 635.**

——S. 115—*Conduct—Adoption—Reversioner—Estoppel by conduct.*

The doctrine of estoppel by conduct is applicable to invalid adoptions. Where a reversioner deals with a person alleged to have been adopted by the last male owner as such and in that capacity accepts a *patni* from him, he is

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estopped from denying the status of the latter as adopted son. (*Fletcher and Walmsley*, JJ.) KIRANBALA DEVI *v.* BALICHARAN SINGHA.
30 I.C. 29.

———S. 115—*Conduct — Landlord and tenant—Separate holdings treated as one—Notice of ejectment.*

Where a landlord has once treated separate holdings of a tenant as one and sued for arrears of rent in respect of all of them in one suit, he is estopped from subsequently serving notice of ejectment in respect of some only of the holdings. (*Baillie*, S.M.) TULSHA DEI *v.* MAHABIR. **27 I.C. 382=1 C.L.J. 722.**

———S. 115—*Conduct—Partition suit.*

In a partition suit the High Court passed a decree determining the respective shares of the parties. Defendant appealed to the Privy Council and pending the appeal to Privy Council the parties entered into an agreement by which partition was effected by metes and bounds. Subsequently the defendant's appeal was dismissed. *Held*, on an application by defendant to have the *ekrarnama* filed, that as the deft. prosecuted the appeal after the execution of the *ekrarnama*, he could not insist on its terms being carried out. (*Stephen and Mullick*, JJ.) LOKENARAIN *v.* JEO LAL. **24 I.C. 675.**

———S. 115—*Conduct—Acceptance of rent by landlord.*

Acceptance of rent under protest, does not estop the acceptor from impeaching the tenancy as such acceptance does not create landlord and tenant relation. (*Mookerjee and Beachcroft*, JJ.) MOOKUNDA LAL CHAKRABURTI *v.* KALIPRASANNA CHATTERJEE. **23 I.C. 592=19 C.L.J. 245.**

———S. 115—*Conduct—Invalid grant—Acceptance of rent.*

In the case of an invalid grant, acceptance of rent from the grantee does not amount to recognition of the grant and does not validate it. (*Mookerjee and Beachcroft*. JJ.) RADHA MADHAB NARAIN *v.* MILAN MAHATO.
21 I.C. 205=18 C.L.J. 23.

———S. 115—*Conduct—Voidable transaction.*

A person may by his conduct or acquiescence make a transaction impeachable by him unimpeachable after a lapse of time. (*Holmwood and Chapman*, JJ.) HARICHARAN BOSE *v.* HARI DAS ROY. **18 I.C. 805.**

———S. 115—*Conduct—Decree—Alteration of.*

A decree should be executed as made and the parties cannot make a substantial alteration therein. But the parties having acted upon the decree as altered for a long time, the judgment-debtors cannot be permitted to object

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to its validity, when they have been benefited. (*Mookerjee and Beachcroft*, JJ.) GOKHARI PADHAN *v.* GONES LAL PANDIT.
16 C.L.J. 404=17 I.C. 936=17 C.W.N. 563.

———S. 115—*Conduct—Landlord's consent—Occupancy holding.*

Where the plaintiff mortgagee of an occupancy holding obtained a decree on his mortgage and after taking a *Hukumnamah* from a co-sharer-landlord, purchased the holding in execution of his decree and became the owner of the land with the landlord's consent, he could not be ousted by any subsequent action of landlord. S. 27 of the Sp. Rel. Act did not embody the only rule of equity applicable to this case and S. 115 of the Evidence Act was particularly applicable to this case. (*D Chatterjee and N. R. Chatterjee*, JJ.) HARIMOHUN DEY *v.* RAM NARAIN DUTT. **14 I.C. 28.**

———S. 115—*Conduct—Non-transferable—Occupancy holding mortgaged without the landlord's consent—Sale by mortgagor to third party—Purchaser taking fresh lease from landlord—Mortgagee's suit—Purchaser, if can plead non-transferability.*

Where a non-transferable occupancy holding which was mortgaged to plaintiff was sold to a third person and the purchaser obtained a fresh lease from the landlord at an enhanced rent, the purchaser cannot plead in a suit by the mortgagee that the holding was non-transferable. 1 I.C. 264, Rel. on. (*Chitty and Coxe*, JJ.) RADHAKANTA *v.* RAMANANDA SAHA.
39 Cal. 513=16 C.W.N. 475=13 I.C. 698=15 C.L.J. 369.

———S. 115—*Conduct—If party can impeach an award, if act of arbitrator favourable.*

A party who is benefited by the wrong act of an arbitrator cannot afterwards impeach its validity. (*Mookerjee and Carnduff*, JJ.) NARSINGH NARAYAN SINGH *v.* AJODHYA PRASAD SINGH. **15 C.L.J. 110=13 I.C. 118=16 C.W.N. 256.**

———S. 115—*Conduct—Denial of locus standi.*

The plaintiff who denies the *locus standi* of the deceased defendants' sons to proceed with an appeal, as they did not come on record as representatives in the first Court is estopped from seeking the execution of his decree against the sons. (*Mookerjee and Teunon*, JJ.) BANTAR BEHARI SIKDAR *v.* GOPAL CHANDRA NEOGL. **10 I.C. 405=14 C.L.J. 589.**

———S. 115—*Conduct — Withdrawal of money from Court.*

Withdrawal of money deposited under O. 21, R. 89, C.P.C., by a private transferee of a holding by the landlord and acquiescence in the setting aside of the sale estops the landlord from questioning the transfer. 6 C.L.J. 601, Foll. (*Coxe*, J.) AHMED ALI *v.* ROSHAN ALI.
9 I.C. 619.

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———S. 115—*Conduct—Decree obtained in a previous suit as son of a particular man—No objection by co-plaintiff as to paternity—Effect.*

Where plaintiffs allowed one S. to join with them in a suit against another person and to obtain a decree as the son of a particular man without objecting that he was the son of the man and had no right to sue, they should be estopped from disputing his property in a suit by them for possession against paternity. (*Martineau and Zafar Ali*, JJ.) SUNDAR SINGH *v.* SHAM SINGH. **1923 Lah. 680.**

———S. 115—*Conduct—Mortgage—Purchase subject to.*

A purchaser assuming liability for the discharge of certain mortgages on the property and receives consideration therefor, is bound by them. (*Scott-Smith and Dundas*, JJ.) ALLAH DITTA *v.* GIAN SINGH.
4 Lah. L.J. 484.

———S. 115—*Conduct—Change of position to be proved.*

A statement relied upon as constituting estoppel, must be proved to cause change in position of the party setting up the estoppel; a statement which does not amount to an estoppel, may be admissible in evidence. (*Leslie-Jones and Moti Sagar*, JJ.) ABDULLA *v.* FATEH MAHOMED. **62 I.C. 809.**

———S. 115—*Conduct—Consent to mutation proceedings.*

When a person appeared at the time of the mutation in respect of the sale in dispute and expressed his consent to it, he cannot subsequently come forward and impugn it. (*Shadi Lal and Martineau*, JJ.) MUHAMMAD UMAR *v.* WALI. **2 Lah. L.J. 306.**

———S. 115—*Conduct—Adoption—Recognition of.*

Where defendant, who challenged an adoption, was the grandson of a party to a compromise under which the adoption was made and under which he received a material benefit and who was present and consenting defendant, he is estopped from disputing the adoption and is bound by his grandfather's action. (*Broadway*, J.) MOMAN *v* DHANNI.
1 Lah. 31=55 I.C. 869=72 P.L.R. 1920.

———S. 115—*Conduct—Arbitration—Consent given orally—Objection to award.*

Where a party to a suit does not join in a written application for reference to arbitration but makes an oral application accepting the arbitration and takes an active part in conducting the proceedings he is estopped from questioning the award on the ground of want of written consent. (*Wilberforce*, J.) GAURI SHANKAR *v.* GANGA RAM. **52 I.C. 859=77 P.R. 1919.**

———S. 115—*Conduct—Status of person—Dispute as to—Burden of proof.*

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Those who challenge the status of a party must show that they have not by their own conduct led the person concerned to imagine that his status was accepted by them. In this respect there is a considerable difference between cases of, say, mortgage and the like, and cases of alleged adoptions, the legitimacy of children and the validity of marriages. If on the acquiescence of the collateral heirs of the adopted father, an adopted son has been brought up as a member of the village community to which his adoptive father belonged and has always been recognised as such, the collaterals are estopped from challenging the validity of the adoption on the ground that it was invalid by custom. (*Chevis and Jones*, JJ.) CHUBAR *v.* JAS KAUR. **69 P R 1917=41 I.C. 927=103 P.W.R. 1917.**

———S. 115—*Conduct—Mutation proceedings — Assent — Withdrawal of assent on reconsideration.*

Where plaintiff's consent was given to a certain mutation of names without consideration, but was on reconsideration quickly withdrawn. *Held*, there was no estoppel by consent. (*Shadi Lal and Le-Rossignol*, JJ.) GHULAM SARWAR *v.* KARAM ILAHI & CO.
39 I.C. 204=58 P.W.R. 1917.

———S. 115—*Conduct — Company—Shareholder taking part in meetings of company—Estopped from objecting to director's authority to act on behalf of company.*

A shareholder who has taken an active part in general meetings of the company and has joined in an annual appointment of the director who has acted as such to the knowledge of the shareholders without any objection on his part is estopped from disputing the validity of his authority to act on behalf of the company. (*Rattigan and Shadi Lal*, JJ.) IMPERIAL OIL AND SOAP AND GENERAL MILLS CO., LTD, *v.* WAZIR SINGH. **31 I.C. 395=182 P.W.R. 1915.**

———S. 115—*Conduct—Mortgage—Heir redeeming a portion—Subsequent suit for rest of the property.*

An heir is not estopped from claiming the rest of the property of a deceased person in the hands of a stranger by reason of his redeeming from that stranger, a small portion of that property. (*Reid*, C.J. *and Kensington*, J.) BUTA SINGH *v.* LAL SINGH.
5 P.W.R. 1915=27 I.C 565=37 P.L.R. 1915.

———S. 115—*Conduct—Mortgage—Parties and privies.*

Where a mortgagee condones defects and defaults in the mortgage he or his representive cannot assail it later on those grounds. When a person makes another think that he recognised and accepted a transaction of his father and the latter consequently suffers liabilities, the former will be estopped from

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going back upon his recognition and acceptance. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD., LAHORE. **3 P R. 1915=110 P.W R. 1914=25 I.C. 480=215 P.L R. 1914.**

——S. 115—*Conduct—Hindu Reversioner accepting mortgage of land sold by widow—Whether estopped from contesting sale.*

A reversioner who accepts a mortgage from a person to whom the widow had sold her share under the impression that the land mortgaged was the vendor's share and not that which the widow sold, is not estopped from contesting the sale. (*Chevis*, J.) SHEREA *v.* HAYAT MUHAMMAD. **32 P.W.R. 1914=23 I.C 515=108 P.L R. 1914.**

——S. 115—*Conduct—Partnership—Suit for settlement of account—Refusal of partner to join as co-plaintiff—Subsequent suit—Equity.*

When a partner to whom money is due from the partnership refuses to join as a co-plaintiff in a suit for settlement of the partnership accounts and otherwise concludes from his conduct that he has abandoned his claim, a relief in a subsequent suit cannot be equitably given. (*Chevis*, J.) DURGA PRASHAD *v.* HARNAM SINGH. **27 P.W.R. 1913=18 I.C. 624=49 P.L.R. 1913.**

——S. 115—*Conduct — Will—Bequest—Validity of—Right of heir to question—Gift to charity.*

Where a bequest to *Dharmarth* was used for a *langar* for more than six years, it will not amount to estoppel against the testator's heir as regards the future and so he can deny the validity of the gift on the ground of its being void for vagueness. (*Robertson and Rattigan*, JJ.) GARDIT SINGH *v.* SHER SINGH. **63 P.W.R. 1912=106 P.L.R. 1912=14 I.C. 247=78 P.R. 1912.**

——S. 115—*Conduct—Estoppel by agreement.*

Where the defendant has agreed to appoint as arbitrator, a European residing at Karachi it is not open to him to plead that he does not know any European merchant at Karachi. (*Rattigan*, J.) DREYFUS & CO. *v.* GURUDITTA MAL. **70 P.W.R. 1911=85 P.L.R. 1911=9 I.C. 655=36 P.R. 1911.**

——S. 115—*Conduct—Hindu joint family—Son taking benefit during father's time—Right to impeach alienation.*

A son by getting certain lands from his father in his life-time is not estopped from challenging the father's alienations when the latter dies and the son comes into possession of the whole estate. (*Chevis*, J.) FAZL HUSSAIN *v.* AMIR HAIRDAR. **76 P L R. 1911=9 I.C. 583=73 P.W.R. 1911.**

——S. 115—*Conduct—Estoppel.*

Per *Ramesam*, J.—Where a defendant induced the Revenue authorities to issue a pattah in the name both of the plaintiff and himself, *held* he is estopped from contending that the plaintiff has no title. (*Spencer and Ramesam*, JJ.) TALIKONDA ALAKSHMINARASIMHAM *v.* TALIKONDA VENKATARATNAYAMMA. **70 I.C. 642=30 M.L.T. 334.**

——S. 115—*Conduct—Estoppel.*

In a prosecution for non-payment of license fee of municipality, failure to appeal to standing Committee does not estop the accused from contesting the validity of imposition. (*Krishnan*, J.) *In re* A.E. SMITH. **45 M L.J. 731=18 L.W. 879.**

——S. 115—*Conduct—Change of position.*

Actions and conduct of parties might give rise to estoppel where such actions and conduct have altered in such a way that the parties cannot be put back in their original position without great loss and inconvenience. (*Wallis*, C.J., *Oldfield and Seshagiri Aiyar*, JJ.) HUSSAIN SAIB *v.* HASSAN SAIB. **41 I.C. 184=5 L.W. 835.**

——S. 115—*Conduct — Will—Daughters taking under will—Subsequent repudiation.*

Daughters taking the estate of the deceased father under a will executed by the mother are not estopped from claiming subsequently on the ground of the invalidity of the will executed by their mother. (*Sadasiva Aiyar and Napier*, JJ.) ALAMELU AMMAL *v.* BALU AMMAL. **16 M.L.T. 592=(1915) M.W.N. 26=26 I.C. 455=28 M.L J. 655.**

——S. 115—*Conduct — Disclaimer—Expression of intention not to claim.*

A mere disclaimer by a person of his preferential right to acquire land made over to rival applicant will not estop him after the land had been actually granted to him by the Government in the absence of a fraud practised on the Government or the rival claimant. 32 M. 300, Expl. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) PERIATHAMBI GOUNDAN *v.* PERIYA GOUNDAN. **23 M.L.J. 593=17 I.C. 489=12 M.L.T. 539.**

——S. 115—*Conduct — Adoption—Invalidity of.*

There is no estoppel against the plea of invalid adoption even though the adoption was acquiesced in, by the family so as to debar the adoptee being restored to his natural family unless the position of those contesting such right, has, in consequence of the adoption been changed to their disadvantage. 7 M,H C.R. 250, Rel. (*White*, C.J. *and Benson*, J.) VAITHILINGA MUDALI *v.* MUNIGAN. **37 Mad. 529=23 M.L J. 189=15 I.C. 289=(1912) M.W.N. 1127**

——S. 115—*Conduct—Adoption—Status—Right to property.*

Plaintiff sued for a declaration that an alienation by R's widow was not binding on him as a reversioner. It, being admitted that

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R was given in adoption, the plaintiff contended that the adoption was invalid. Plaintiff had recorded R as an adopted person all along. *Held*, that plaintiff was not estopped from questioning R's real status, though he could not question R's rights to the property of the adopter. (*Benson and Sundara Aiyar*, JJ.) AIYANNA CHARIAR *v*, LASKHMI AMMAL
21 M.L.J. 500=10 M.L T. 19=10 I.C. 194=(1911) 2 M.W.N. 62.

———**S. 115**—*Conduct—Building on land of another—Standing by.*

If a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. It has to be decided in each case whether the special circumstance of that case do or do not amount to such a standing. (*Hallifax* A.J.C.) RAMRATAN *v*. SHIODATTARAI.
73 I.C. 137.

———**S. 115**—*Conduct—Parties—Mortgage—Foreclosure—Mortgagor and cultivator parties—Estoppel.*

In a foreclosure suit the mortgagor and the cultivator in possession of the property were made parties. The former did not appear but the latter proved that the mortgage-debt had been satisfied. The mortgagee cannot allege in appeal that the cultivator had no interest or right to redeem as he intended to secure a mortgage decree against him also by impleading him. No decree could be passed against the absent mortgagor, as the repayment of debt, was proved. (*Drake-Brockman*, J.C.) KASHAM KHAN *v*. MUSSAMMAT SAWITRI.
19 I.C. 547=9 N.L.R. 38.

———**S. 115**—*Conduct — Statement before Revenue officer in mutation proceedings—Effect of.*

A statement in the Court of an Assistant Collector during the mutation proceedings to the effect that the plaintiff and two others were in possession of the property in equal shares and that mutation of names may be made accordingly, does not prevent the plaintiff from asserting his right to the entire property in a Civil Court subsequently. (*Dalal*, A.J.C.) RAM RATAN *v*. BINDA.
72 I C. 832=9 O. & A.L.R. 20.

———**S. 115**—*Conduct—Arbitration—Arbitrator seeking to upset award.*

A dispute was settled by arbitration. Subsequently two of the arbitrators purchased the interest of one of the parties to the dispute and sought to upset the arrangement. *Held*, that they cannot dispute it. (*Stuart*, A.J.C.) BUDHA SINGH *v*. KARAN SINGH.
55 I.C. 506=7 O L.J. 26.

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———**S. 115**—*Conduct—Sale—Acted upon—Subsequent suit for cancellation.*

Where a portion of the equity of redemption is sold and both the vendors and vendee sue for redemption, it is not open to the vendor to subsequently sue for cancellation of the sale. (*Daniels*, A.J.C.) CHAUHAN *v*. BIHARI LAL.
52 I.C. 513=1 U.P.L.R. (J C.) 14.

———**S. 115**—*Conduct — Accepting rent—Starting point.*

Acceptance of an illegal enhancement of rent operates as estoppel when the tenant sets up a fresh statutory period from the date of enhancement in contesting a notice of ejectment. (*Campbell*, J.) RAMESHWAR BAKSH SINGH *v*. RAGHUBAR.
33 I.C. 163=2 O.L.J. 725.

———**S. 115**—*Conduct—Nephews and grand-nephews of deceased—Agreement based on existing rights—Estoppel.*

Where the nephew and grand nephews of a deceased person sue for possession on the strength of an agreement among themselves and succeed in the suit, *Held*, that the agreement wat based on the recognition of an existing right and whether that recognition was correct or mistaken, it was not open to the plaintiff (nephew) to go behind it and therefore the plea of estoppel is an effective bar to the plaintiff's claim. (*Kanhaiya Lal*, A.J.C.) SHEOAMBAR SINGH *v*. BALBHADRA SINGH.
18 O.C. 61=23 I C. 357=2 O.L.J. 137.

———**S. 115**—*Conduct—Mutation proceedings—Withdrawal of claim.*

A withdrawal of claim in a revenue mutation proceeding does not estop a person from suing for the portion in a Civil Court, if the opposite party is not thereby prejudiced. (*Stuart*, A.J.C.) MAHADEO SINGH *v*. JAG MOHAN SINGH.
25 I C. 34.

———**S. 115**—*Conduct—Plaintiff's admission of other persons in suit for property—Effect.*

If a plaintiff who was the nearest heir, allowed other heirs to join him in a redemption suit and such heirs spent money and actually assisted in prosecuting the litigation, the plaintiff could not, after recovering the property, assert his superior title as the nearest heir, on the principle of estoppel by conduct. (*Lindsay*, A.J.C.) BHAGWANT SINGH *v*. RAJAH SINGH.
9 I.C. 415.

———**S. 115**—*Conduct—Estoppel by.*

Where, in a suit for rent, defendant objected to the non-inclusion of certain plots whereupon plaintiff included the same, reserving right to sue upon title afterwards, and then brought a suit in ejectment based on title. *Held*, defendant was not estopped by conduct. (*Das and Adami*, JJ.) CHOWDHURI RAM PRASAD SINGH *v*. RAM CHANDRA RAI.
4 P.L.T. 730=1924 P. 203.

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——S. 115—*Conduct—Building on land—Knowledge—Improvements — Silence of landlord.*

The estoppel under S. 115 of the Evidence Act may arise by reason of either a declaration, an act or an omission, but in either case there must be an intention on the part of the person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of mere omission no such intention can well be imputed unless the true facts are known to the person whose omission is in question, but where there is a deliberate declaration or act causing or permitting such belief and inducing another to act upon it, it must be presumed that such declaration or act was intended to have its ordinary and natural effect upon the mind and actions of the other party. 20 C. 296 (P C). Ref. Where a tenant builds on land leased to him under the impression that he has a permanent lease of the same and the landlord encourages him to do this, the latter is estopped from asserting that the lease was an annual one. The rule of law applicable to the case is this. If a man under a verbal agreement with a landlord for a certain interest in land or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest takes possession of such land, with the consent of the landlord and upon the faith of such promise or expectation with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectations. 21 C.W.N. 903; 4 C.W.N. 462; 23 W.R. 399; 29 B. 580; *Ramsden v. Dyson*, (1866) 1 A.C. 129, Rel. (*Miller*, C.J. *and Mullick*, J.) L. E. RALLI *v.* A. H. FORBES. **3 P.L.T. 467 = (1922) Pat. 209 = 4 U.P.L.R. (Pat.) 43 = 1922 P. 258.**

——S. 115—*Conduct—Award given after time—Acquiescence.*

Where the parties have by conduct agreed to accept the award, made after the allotted time they cannot afterwards contend that it was invalid because delivered out of time. (*Atkinson and Das*, JJ.) PATTA KUMARI *v.* UPENDRA NATH. **50 I.C. 52 = 4 P. L.J. 265.**

——S. 115—*Conduct—Entry of husband's name as joint occupier—Effect.*

The entry in Revenue Maps of a person's name as joint occupier with another, would not estop the latter from claiming as sole owner. (*Twomey*, J.) MG YE *v.* MY AUNG THA. **12 I C. 206 = 4 Bur. L.T. 255.**

Consent, Decree or order.

——S. 115—*Consent decree—Estoppel.*

Where a party agreed to dispose of the suit by the ascertainment of a simple fact under O. 23, R. 3, C. P. Code, he cannot resile from the agreement. (*Sharfuddin and Coxe*, JJ.) KHOBHARI SAH *v.* JHAMAN SAH. **34 I.C. 220 = 23 C.L.J. 482.**

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——S. 115—*Consent deceee—Party to a compromise—Not estopped from contending that sale should be set aside in its entirety.*

A party to a compromise is not estopped from contending that a sale, if set aside at all, must be set aside in its entirety. (*Chapman and Newbould*, JJ.) ICCHAMONI DASI *v.* PROSANNO KUMAR MONDAL. **31 I.C. 858.**

——S. 115—*Consent decree—Agreement by plaintiff in a previous suit to give up land—Effect.*

An agreement by way of compromise in a previous suit, by the plaintiff to give up possession of a certain land to the defendant will operate as an estoppel against the plaintiff from alleging that he still had a subsisting title to it. (*Shah Din*, J.) CHHANGA *v.* PHUMMAN SHAH. **46 I.C. 7 = 121 P.W.R. 1918.**

——S. 115—*Consent decree—Jurisdiction.*

Consent to refer to arbitration does not estop a party from challenging the jurisdiction of the Court which made the reference on the agreement. (*Robertson and Beadon*, JJ.) AMOLAK SHAH *v.* CHARAN DAS. **16 P.W.R. 1913 = 52 P.R. 1913 = 17 I.C. 684 = 14 P.L.R. 1912.**

——S. 115—*Consent—Act of parties—Agreement for issue of inam title-deed in the names of two persons—If either can contend there is no title in the other.*

Where there is an agreement for issue of inam title-deed in the names of two persons, neither can contend that there is no title in the other. (*Spencer and Ramesam*, JJ.) TADIKONDA LAKSHMINARASIMHAM *v.* VENKATARATNAYAMMA. **30 M.L.T. 334 (H. C.).**

——S. 115—*Consent order—Estoppel—Scope of the doctrine.*

An estoppel arises when the person is not allowed to deny the truth of some matter which he has made another to believe to be true. When it was agreed between the parties that the claim petition of the defendant should be allowed but without costs and that plaintiff should apparently in consideration of the defendant giving up the costs refrain from instituting a suit. *Held*, no question of estoppel arises. *Quaere.*—Whether such an agreement would be void on the principle contained in S. 28, Contract Act. (*Ayling and Tyabji*, JJ.) VENKATARAMA AIYAR *v.* NARAYANA AIYAR. **28 I.C. 536 = (1915) M.W.N. 237.**

——S. 115—*Consent decree—Will—Legatees—Suit by legatee under will—Consent decree—Subsequent suit between parties—Question of genuineness of will, if* res judicata.

In a suit for possession where the defendant claims the property as an adopted son and sets up a will, the fact that in a former suit in which the plaintiff was a party, the question of the genuineness of the will was at issue but was

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not contested by the plaintiff does not amount to an estoppel; nor does a question of *res judicata* arise as the decree in the previous suit is one by consent between different parties altogether. (*White*, C.J., *and Phillips*, J.) PUTTA VENKATA SATYANARAYANA *v.* PUTTA GANGAMMA. **11 I.C. 834.**

——S. 115—*Consent decree.*

For determining on what matters estoppel will operate by reason of a consent decree it will be necessary to see whether the parties decided the particular matter by compromise, whether it was embodied in the decree or whether it was necessarily involved in the decree or whether it was the basis of what was embodied in the decree. (*Benson and Sundara Aiyar*, JJ.) KUMAR VENKATA PERUMAL *v.* TATHA RAMASAWMY CHETTY. **35 Mad. 75 = (1911) 1 M.W.N. 290 = 9 M.L.T. 487 = 9 I.C. 875 = 21 M.L.J. 709.**

——S. 115—*Consent decree—Acceptance of benefit.*

An acceptance of benefits under a compromise will operate to estop the person accepting from disputing it afterwards. (*Stuart*, A.J.C.) NIAMAT KHAN *v.* DEPUTY COMMISSIONER, KHERI. **25 I.C. 816 = 1 O.L.J. 442.**

——S. 115—*Consent decree.*

In a compromise relating to occupancy holding, sale in case of default serves as estoppel. (*Das and Adami*, JJ.) NIDHI PARIDA *v.* KARUNAKAR PADHAN. **1 P. 153 = 1922 P. 483.**

——S. 115—*Consent order—Compromise of suit—Withdrawal of claim—Estoppel.*

Where a person by consent to a compromise includes another to withdraw his claim, the former is estopped from subsequently ignoring the terms of the compromise. (*Atkinson and Jwala Prasad*, JJ.) MAHADEO RAI *v.* SHEOGULUM MAHTO. **45 I.C. 332 = 2 P.L.J. 634.**

Criminal Law.

——S. 115—*Criminal Law—Doctrine of estoppel.*

There is no estoppel in Criminal Law. (*Knox and Walsh*, JJ.) MAHA RAM *v.* EMPEROR. **16 A.L.J. 414 = 46 I.C. 819 = 19 Cr. L.J. 615 = 40 All. 393.**

Equitable Estoppel.

——S. 115—*Equitable estoppel—Implied consent.*

In a suit for demolition of certain constructions erected on the plaintiff's land, it was found that the plaintiffs tried to prevent the defendants from erecting them, and that the defendants had no reasonable belief that they were the owners of the disputed land on which the constructions were made. *Held*, that it is impossible to bring the case within the principle of equitable estoppel laid down in 21 All. 490 (P.C.). (*Daniels*, J.) MAOLA *v.* BAHORU. **1923 All. 567.**

EVIDENCE ACT (I of 1872), S. 115—Estoppel against Estoppel.

——S. 115—*Equitable estoppel—Land—User of—Conversion.*

The defendants, having been granted a user of certain lands for certain purposes, used it for purposes other than the purpose for which it had been granted, by digging a *baoli* which was used by the public. *Held*, there was no question of the owner standing by watching the construction of the *baoli* being made by a person who was under a mistaken belief that the land was his own property, in order to gain an advantage. The defendants could not have believed that the land was their own property and there was nothing to show that the plaintiffs had any sinister motive in abstaining at the time from protest. (*Stuart*, J.) MAULVI MAHOMED *v.* MAHABIR DAS. **1923 All. 11 (1).**

——S. 115—*Equitable estoppel—Recourse to—Clean hands.*

A Court of equity will not have recourse to the doctrine of estoppel or acquiescence for the benefit of a party who does not come into Court with clean hands. (*Mookerjee and Newbould*, JJ.) JAHARADDI MANDAL *v.* DEBNATH. **33 I.C. 762 = 20 C.W.N. 657.**

——S. 115—*Equitable estoppel — Indemnity.*

Where under a contract of indemnity, A was bound to pay interest on B's debts and on breach thereof a suit was brought against A and B in which A contended that he had paid the interest but his contention was rejected and the suit decreed. *Held*, in a suit by B against A for damages that A was equitably estopped from again contending that he had paid interest. (*Sundara Aiyar and Phillips*, JJ.) NALLAPPA REDDI *v.* VRIDHACHALA REDDI. **25 I.C. 888 = 37 Mad. 270.**

Estoppel against Estoppel.

——S. 115—*Estoppel — Acquiescence — Sale by one of three brothers—Others standing by vendee raising buildings.*

Where a property belonging to three brothers is sold by one to a stranger who erects costly buildings upon it to the knowledge of all the three and the other two stand by it for a long time, they are estopped, from contending that one of them had no right to sell without their consent. (*Broadway and Harrison*, JJ.) DHANPAT RAI *v.* GURANDATHA. **61 I.C. 520 = 2 Lah. 258.**

——S. 115—*Estoppel against estoppel.*

Estoppel against estoppel sets the matter at large. The Court has to see what the original rights of the parties are. (*Scott-Smith*, J.) JIWAN LAL *v.* BEHARI LAL. **45 I.C. 68 = 152 P.W.R. 1918.**

——S. 115—*Estoppel against estoppel.*

Estoppel against estoppel sets the matter at large explained. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SARUP CHAND *v.* MUSSAMMAT PANI. **37 I.C. 198 = 19 O.C. 240.**

EVIDENCE ACT (I of 1872), S. 115—Executor.

Executor.

———S. 115—*Executor—Trustee—Executor cannot set up title adverse to the testator.*

No person who has accepted the position of executor or trustee under a will and acquired property in that capacity can be permitted to assert an adverse title thereto on his own behalf until he has obtained a proper discharge from the trust with which he had clothed himself. (*Lord Macnaghten.*) SRINIVASA MOORTHY *v.* VENKATAVARADA AIYANGAR.

34 Mad. 257=15 C.W.N. 741=8 A.L.J. 774=13 Bom. L.R. 520=(1911) 2 M.W.N. 375=14 C.L.J. 64=21 M.L.J. 669=11 I.C. 447=10 M.L.T. 263 (P.C.).
[Affirming 29 Mad. 239=16 M.L.J. 238=1 M.L.T. 71.]

———S. 115—*Executor—Legatee—Heir-at-law.*

As between the testator on the one hand and the legatee or the executor on the other, there is no estoppel. Nor is the heir-at-law of a testator *raiyat* estopped from questioning the transfer of a holding made by a will. 12 C.W.N. 1086, not Foll. In every case of gift, the doctrine of estoppel does not apply as between donor and donee. (*Mookerjee and Beachcroft*, JJ.) AMULYA RATAN SARKAR *v.* TARINI NATH DAY. **42 Cal. 264=18 C.W.N. 1290=27 I.C. 235=21 C.L.J. 187**

Execution Sale.

———S. 115—*Execution sale—Decree-holder failing to mention incumbrance in sale proclamation—Effect.*

Where the execution application asked for a sale of property subject to a mortgage in the decree holder's favour but by some mistake it was omitted in the sale proclamation and there was nothing to show there was any misrepresentation, no estoppel arises. (*Mears*, C.J. *and Banerjee*, J.) RAM SARUP *v.* BHARAT SINGH. **43 All. 703=64 I.C. 763=19 A.L.J. 744.**

———S. 115—*Execution of decree—Estoppel to appeal.*

Execution of a decree has never been held to estop the decree-holder from appealing from it so far as it is against him. (*Krishnan and Venkatasubba Rao*, JJ.) TADEPALLI SUBBA RAO GARU *v.* SRI BALASU BUCHI SARVARAYUDU. **44 M.L.J. 534=18 L.W. 61=(1923) M.W.N. 533=1923 Mad. 533.**

———S. 115—*Execution sale — Subject to mortgage—Rights of auction purchaser.*

In a sale in execution of a rent decree obtained by the mortgagee, the purchaser gets the right and interests of the mortgagor if he knew of the mortgage at the time of purchase. The mortgagee can enforce his right against auction-purchaser, who knew of the mortgage at the time of purchase. (*Richards*, C.J. *and Rafique*, J.) NANAK CHAND *v.* CHAMELI KUNWAR. **17 A.L.J. 288=50 I.C. 777=1 U.P.L.R. (H.C.) 27.**

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———S. 115—*Execution sale—Continuation—Objection that property is not saleable.*

Held, that defendant having allowed the auction sale to take place without objection and that sale having been confirmed, it became conclusive as between the parties and the purchaser acquired a vested interest in the property sold and the defendant was precluded from questioning the validity of the sale and the title of the purchaser on the ground that it was exempt from attachment. (*Banerji and Ryves*, JJ.) LALA RAM *v.* THAKUR PRASAD. **40 All 680=47 I.C. 947=16 A.L.J. 691.**

———S. 115—*Execution sale—Mortgage.*

A person bringing properties to an execution sale without disclosing a mortgage of his own on the property cannot set it up afterwards against the purchaser, if the latter had no notice of it. (*Chamier and Piggott*, JJ.) GANESH *v.* BABU RAM **37 All. 72=26 I.C. 427=13 A.L.J. 9.**

———S. 115—*Execution sale—Mortgage deed notified at sale—Purchaser if can plead that the deed was fictitious—Estoppel.*

A decree-holder purchaser at an execution sale can plead that a mortgage-deed notified at such sale is fictitious unless there was some act, declaration or omission on his part which operates as an estoppel. 28 A. 418, Foll. (*Griffin and Rafique*, JJ.) JAIRAJMAL *v.* RADHAKISHAN. **35 All. 257=20 I.C. 182=11 A.L.J. 357.**

———S. 115—*Execution sale — Occupancy holding—Mortgage—Fixed rate tenure—Suit and sale—No objection.*

An occupancy tenant mortgaged his holding to the Zemindar describing the holding as a fixed rate tenure. In execution of a decree, on the mortgage, the holding was purchased by a stranger. No objection was raised either in the suit or in execution that the holding was an occupancy holding. *Held*, that subsequently the judgment-debtor tenant could not say that it was an occupancy holding and not transferable. (*Tudball and Chamier*, JJ.) ASGHAR HUSSAIN *v.* PAL AHIR, **34 All. 538=15 I.C. 227=10 A.L.J. 66.**

———S. 115 — *Execution sale—Purchaser subject to mortgage—Estoppel affecting mortgagor—Purchaser if bound.*

A purchaser at an execution sale is bound by the same rule of estoppel as the judgment-debtor and consequently he cannot dispute the validity of a mortgage as the mortgagor himself is estopped from questioning. 22 C. 909; 10 C.L.J. 150; 21 C.L.J. 441, Rel. (*Mookerjee and Cuming*, JJ.) NANDA LAL AGRANI *v.* JOGENDRA CHANDRA DATTA. **36 C.L.J. 421=1923 Cal. 53.**

———S. 115—*Execution sale—Decree-holder allowing sale advertisement in a particular way.*

A rent decree-holder allowing a sale advertisement in execution of his decree to be drawn

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up in a particular way, *i.e.*, as Mokarari, cannot be allowed to repudiate it afterwards and plead that the purchaser has bought something different from what was advertised for sale. The estoppel would not affect the landlords who were not parties to the suit. (*Coxe and Ray*, JJ.) KHIRODE CHANDRA GHOSH *v.* JANKI DAS JANUP. **20 I.C. 753.**

———S. 115—*Execution sale—Incumbrance—Omission to notify.*

The decree-holder, who must notify before the sale all encumbrances on the property about to be sold, cannot subsequently set up, against the execution purchaser, a secret encumbrance in his own favour. The principle of estoppel does not apply to the case of an execution-purchaser of a homestead land under a *ghatwal* in a sale held under the Public Demands Recovery Act, where the land was described as rent-free in the sale certificate. The plea of estoppel proves unsustainable. (*Mookerjee and Beachcroft*, JJ.) PROSANNA KUMAR MUKHERJEE *v.* SRIKANTA.
40 Cal. 173=17 C.W.N. 137=16 I C. 365=16 C.L.J. 202.

———S. 115 — *Execution sale — Purchase subject to mortgage—Purchaser can dispute mortgage.*

Where a person purchases property subject to a mortgage, he is not by that sole fact estopped from disputing the validity of or the consideration for the mortgage. But if the mortgagee has been thereby induced to suffer some detriment or if he foregoes a portion of his money then the purchaser may be estopped from disputing the mortgage. (*Rattigan*, C.J. *and Martineau*, J.) BALA PRASAD *v.* SUJAN SINGH. **49 I C. 997=28 P.W.R. 1919.**

———S. 115—*Execution sale—Decree-holder selling his own properties by mistake—Purchase in execution—Subsequent setting aside the sale.*

Where in execution of a money decree the decree-holder under a *bona fide* mistake brought to sale certain of his own properties as those of his judgment-debtor and the sale was confirmed and delivery of possession was made to the purchaser. *Held* that the decree-holder was estopped from setting up his own title to the properties as against the auction-purchaser notwithstanding the fact that his mistake was a *bona fide* one. 20 C. 296, Foll. (*Ayling*, O.C.J. *and Odgers*, J.) RAMASWAMI KONAN *v.* KULANDAIVELU PILLAI. **15 L.W. 272=(1922) M.W.N. 121=1922 Mad. 63.**

———S. 115 — *Execution sale — Incorrect statement in proclamation—Knowledge—Omission to object.*

Where a judgment-debtor does not raise any objection to an incorrect statement in the sale proclamation he fails in his duty to the Court and he is estopped from complaining of any

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irregularity resulting from an erroneous statement which he would have corrected. This rule will not apply if the judgment-debtor was not aware of the facts. (*Benson and Sundara Aiyar*, JJ.) RAJA OF KALAHASTI *v.* MAHARAJAH OF VENKATAGIRI. **38 Mad. 387=14 M.L.T. 320=21 I.C. 389=25 M.L.J. 198.**

———S. 115—*Execution sale — Judgment-debtor—Objection.*

In executing a maintenance decree, the decree-holder applied for sale of certain properties alleging that they were liable to be sold under the decree. The judgment-debtor did not object to the sale. On a subsequent similar application the judgment-debtor raised the objection. *Held*, that he cannot now be heard to say that the decree does not direct the sale of property made liable for maintenance. (*Munro and Sankaran Nair*, JJ.) KONDAMA NAIDU *v.* VISALAKSHI. **10 I.C. 632.**

———S. 115—*Execution sale — Approbate and reprobate—Judgment-debtor estopped from impeaching.*

A party cannot take the benefit of a transaction and at the same time repudiate it when the transaction is one and indivisible. Where the property of a judgment-debtor is sold in execution of the decree and the proceeds go in satisfaction of the decree and the judgment-debtor accepts the payment of the decree, he cannot impeach a part of the sale. (*Mittra*, A.J.C.) ANNAPURNABAI *v.* RAM CHANDRA. **43 I.C. 178.**

———S. 115—*Execution sale—Property sold as that of one judgment-debtor—Others' acquiescence with knowledge—Effect.*

Where in execution of a decree against several persons, a certain property was attached and sold as that of one of the judgment-debtors, and the others though they had knowledge of the proceedings and were present at the sale raised no objections whatever and even allowed the sale to be confirmed. *Held*, in a subsequent suit by them against the auction-purchaser for possession on the ground that they had an interest in the property, they were estopped by their conduct at the sale and even subsequently by allowing the sale to be confirmed. 10 I.A. 25 and 15 I.A. 171, Ref. to. (*Lyle*, A.J C.) ABDUL RAZAQ *v.* MUHAMMAD HAJJAN. **9 O.L.J. 131=1922 Oudh 11.**

———S. 115—*Execution sale—Judgment-debtor—Decree amount—Omission to object.*

There is no estoppel against a judgment-debtor by his acknowledging the decretal amount, unless it is shown that he knew the details of the amount. The judgment-debtor can subsequently plead that the amount was less. (*Kanhaiya Lal*, A.J.C.) DELHI LONDON BANK, LTD. *v.* RAM RATAN. **32 I.C. 754=2 O.L.J. 611.**

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——S. 115—*Execution sale—Omission—Charge not notified in sale proclamation—Effect of.*

A party to a suit who having a charge or encumbrance on the property in suit ordered to be sold, fails to have that charge or encumbrance notified in the sale proclamation, is estopped from subsequently setting up his lien against the auction-purchaser. The doctrine of estoppel cannot be said to rest absolutely upon any notice of duty on the part of the person sought to be estopped. And the word 'omission' used in S. 115 does not mean merely an omission to perform such a duty as is prescribed by law. (*Lindsay*, J C.) MANIK RAM *v.* RAM AUTAR. **27 I.C. 611 = 2 O.L.J. 22.**

——S. 115—*Execution sale—Sale on subsequent mortgage—Prior mortgagees if bound to get their mortgages notified at the time of sale.*

There is no duty on prior mortgagees to get their mortgage liens notified in a sale in execution and no estoppel can arise as against the auction-purchaser by reason of such non-notification. 36 C. 323, Dist. (*Lindsay*, J.C.) KIFAYAT ULLAH *v.* MAHABIR PRASAD. **24 I.C. 2 = 1 O.L.J. 176.**

——S. 115—*Execution sale — Purchase subject to mortgage.*

An auction-purchaser of property subject to a prior mortgage is estopped from denying the validity of the mortgage on the ground of failure of consideration or undue influence; but, if he merely buys an estate which is under mortgage but does not take it subject to the encumbrance, he can impeach the validity of the mortgage. Where property is sold in accordance with a decree for sale the purchaser cannot raise a plea of priority in respect of a mortgage, not set up by the mortgagee in his suit for sale. (*Lindsay*, A.J.C.) RAMKUMAR *v.* DWARAKA PRASAD. **15 I C. 5 = 15 O.C. 211.**

——S. 115—*Execution sale.*

Where judgment-debtor, in spite of notice of the date of settling the sale proclamation being issued to him, fails to attend, he is estopped from subsequently challenging the valuation. (*Mullick and Bucknill*, JJ.) MAHADEO SINGH *v.* DHOBI SINGH. **1923 Pat. 283 = 4 P.L.T. 721 = 2 P. 916 = 1924 P. 111.**

——S. 115—*Execution sale—Objection to—Consent to attachment before judgment.*

A judgment-debtor is not estopped from objecting to the validity of an execution sale on the ground that the property is a non-transferable occupancy holding merely because he consented to an order of attachment before judgment of the property. The attachment merely prevented an alienation and the judgment-debtor by consenting to it merely

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fettered his right to deal with the property. (*Roe and Jwala Prasad*, JJ.) BOCHAI MAHTON *v.* ISRIJAJI. **47 I.C. 29 = 5 Pat. L.W. 185.**

Fraud.

——S. 115—*Fraud.*

Where there is false representation of ownership of land by a mortgagor and the mortgagee is unaware of false title the mortgagor cannot take advantage of his own fraud. (*Rafiqu and Piggott*, JJ.) SAIYID MUHAMMAD *v.* PURSHOTAM SARAN. **1922 All. 231.**

——S. 115—*Fraud—Advantage from.*

Estoppel and the above equitable rule are quite different. The former is no more than a rule of evidence, and its operation hardly extends to cases falling under the above equitable principle. The applicability of the maxim depends on the question whether any fraud was committed at all by the person and on the question whether any advantage was derived by him by the fraud assuming constructive fraud on his part. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBHAI. **41 Bom. 93 = 37 I.C. 915 = 18 Bom. L.R. 954.**

Illegality.

——S. 115—*Illegality — Procedure — Parties agreeing to abide by result of local inspection by Munsif.*

Where parties agree to abide by the result of a local inspection by the Munsif, the Munsiff made the inspection and left a note thereof on the basis of which his successor in office decided the case, it was held that the trial was not a good one and that the parties were not estopped from questioning the validity of the same. (*Banerjee*, J.) KISHAN NARAIN *v.* RAM BAKHSH. **22 I C. 51 = 12 A.L.J. 48.**

Inconsistent Pleas.

——S. 115—*Inconsistent pleas—Different litigation.*

Plaintiff was estopped by his own proceeding in the arbitration wherein he received his full half of the properties belonging to his father upon the footing of the exclusion of the mother from claiming a share therein through his mother. (*Lord Dunedin*, J.) MAHOMED WALI KHAN *v.* MUHAMMAD MOHI-UD-DIN KHAN. **11 L.W. 421 = 24 C.W.N. 321 = (1920) M.W.N. 189 = 27 M.L.J. 204 = 58 I.C. 843 = 2 U.P.L.R. (P.C.) 48 (P.C.).**

——S. 115—*Inconsistent pleas—Prompt and deferred dower.*

Where a Mahomedan husband in a suit by his wife, to recover from him the prompt portion of her dower, contended that the whole of the dower settled was deferred. *Held*, in a second suit by the wife to recover the deferred portion that he was estopped from raising the contention that the whole dower was prompt

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in view of his defence in the prior suit. (*Sir John Edge.*) PARBATI *v.* MUHAMMAD MUZAFFAR ALI KHAN. **34 All. 289 = (1912) M.W.N. 417 = 11 M.L.T. 316 = 9 A.L.J. 450 = 13 C.L.J. 468 = 14 Bom. L.R. 460 = 23 M.L J. 11 = 15 I.C. 196 = 16 C.W.N. 913 (P.C.).**

[On appeal from 29 All. 640 = 27 A.W.N.221 = 4 A.L.J. 521.]

———**S. 115** — *Inconsistent pleas—Jurisdiction.*

Where in a previous suit for ejectment brought in a Revenue Court, the suit was dismissed on the objection of the defendant as to the jurisdiction and the plaintiff was directed to bring his suit in the Civil Court, it is not open to the defendant to plead that the suit, when brought in the Civil Court, was not maintainable. (*Chamier*, J.) ABDUL QAYUM *v.* FIDA HUSSAIN. **30 I.C. 551 = 13 A.L J. 854.**

———**S. 115**—*Inconsistent pleas—Effect of.*

In a suit for ejectment in a Civil Court, defendant pleaded that he was an agricultural tenant, upon which the Munsif acting under S. 202 of the Agra Tenancy Act directed defendant to establish his plea in a Revenue Court within time. On default being made, the suit was decreed. The suit was dismissed by the appellate Court which found that deft. was a tenant of plff. and that no notice of the termination of the tenancy had been given to him under S. 106 of the T. P. Act. *Held*, that it was not open to the lower Appellate Court to find as it did having regard to the pleading of the defendant. (*Piggott*, J.) NARAYAN SARUP *v.* NANDA. **28 I.C. 568 = 13 A L.J. 249.**

———**S. 115**—*Inconsistent pleas—Execution proceedings.*

In execution of the decree, the decree-holder applied for sale of two mortgage-bonds, and the judgment-debtors (being representatives of the deceased debtor) prayed for time to pay the decree amount and the Court granted him and struck off the execution application. Subsequently when the decree-holder applied for the same relief, the judgment-debtors contended that the mortgage-bonds were their own property and could not be sold under the decree. *Held*, that the neither *res judicata* nor estoppel barred the objection. 4 A.L.J. 400, Foll. ; 31, C. 822 ; 26 W.R. 44 ; 38 C. 122 ; 24 A. 138 Dist. (*Karamat Hussain*. J.) RAM CHANDAR SINGH *v.* PUTTU LAL. **11 I.C. 980 = 8 A.L J. 814.**

———**S. 115**—*Inconsistent pleas—Suit for dower—Prompt and deferred.*

Where in a previous suit for part of the dower as prompt, the plea had been raised that the whole was deferred, *Held*, that in a subsequent suit it cannot be pleaded by the deft's. representative in interest that the whole was

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prompt. (*Stanley*, C.J. *and Banerji*, J.) UMDA BEGAM *v.* MUHAMMADI BEGAM. **33 All. 291 = 9 I.C. 200 = 8 A.L.J. 27.**

———**S. 115**—*Inconsistent pleas—Not to be taken.*

A party litigant cannot be permitted to take up inconsistent positions to the detriment of his opponent. 27 C.L.J. 535 ; 5 C.L.J. 95, Ref. (*Mookerjee and Panton*, JJ.) BAMA CHARAN CHAKRAVARTI *v.* KISHORE MOHAN RAY. **35 C.L.J. 58 = 1922 Cal. 114.**

———**S. 115**—*Inconsistent pleas—Landlord and tenant—Settlement record.*

When an alteration in the record was made by the settlement authorities upon the joint application of a landlord and tenant, the latter is precluded from contending that the order was made without jurisdiction and is not binding upon him. 9 All. 191, Ref. (*Mookerjee and Carnduff*, JJ.) RAM PRASAD NARAYAN *v.* DAUD DUBJI. **53 I.C. 39 = 30 C.L.J. 1.**

———**S. 115**—*Inconsistent pleas — Parties not allowed to take.*

That parties should not be allowed to take up inconsistent positions in Court to the detriment of their opponents is an elementary principle of justice and equity. A defendant cannot be allowed to defeat the claim of the plaintiff on proof that, contrary to their previous allegation a decree for recovery of possession might and should have been made in favour of the plaintiff in the previous suit. (*Mookerjee and Beachcroft*, JJ.) GIRISHCHANDRA BIT *v.* BEPIN BEHARI KHAN. **44 I.C. 159 = 27 C.L.J. 535.**

———**S. 115**—*Inconsistent pleas—Incumbrancer involving purchaser in litigation.*

An incumbrancer who, by disputing the title of the purchaser of the holding at a new sale is responsible for the delay in the issue of notices to annul the incumbrances cannot be allowed to say that the title under which the purchaser claimed to issue the notices was perfected on the date of actual sale and not on confirmation. 10 C.L.J. 640, Foll. (*Chatterjee*, J.) GOBINDCHANDRA LALA *v.* TARA PADA BHATTACHARJEE. **9 I.C. 603.**

———**S. 115**—*Inconsistent pleas—Estoppel by conduct.*

A plaintiff who has objected to the admissibility of a certain document in a previous suit by the defendants and has practically compelled them to withdraw their previous suit, is estopped from asking the Court to grant him a declaratory decree upon basis of that very agreement. (*Rattigan and Chevis*, JJ.) ALAM SHAH *v.* NURZAMAN SHAH. **63 P.W.R. 1913 = 18 I.C. 804 = 114 P.L.R. 1913.**

———**S. 115**—*Inconsistent pleas—Appeal.*

A female after claiming inheritance in the lower Courts as the daughter's daughter of the penultimate male holder is not estopped on

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appeal from taking up a different position and claiming as the sister of the last male holder. 134 P.R. 1907, Foll. (*Johnstone and Shah Din*, JJ.) ISHAR KUAR *v.* RAJA SINGH.
29 P.R. 1911=94 P.L.R. 1911=9 I.C. 608=124 P.W.R. 1911.

———S. 115—*Inconsistent pleas.*

The position taken up in appeal, by a litigant should be consistent with that relied on by him in the lower Court. (*Arthur Reid*, C.J.) NAWAB KHAN *v.* YATAM. **2 P.W.R. 1911=9 I.C. 36=15 P.L.R. 1911.**

———S. 115—*Inconsistent pleas — Small cause—Original side.*

The defendant objected that the Small Cause Court had no jurisdiction, whereupon the District Munsif returned the plaint to the ordinary side. Against the decree of the Munsif there was an appeal to the Subordinate Judge. Against the appellate order of the latter, a revision petition was filed in the High Court and plaintiff raised the objection that the suit was of a small cause nature and that no appeal lay to the Subordinate Judge. *Held*, that the plaintiff was estopped from raising the objection. (*Oldfield and Seshagiri Aiyar*, JJ.) AIYATHURAI PILLAI *v.* GNANAPRAKASA ODAYAR. **52 I.C. 829.**

———S. 115—*Inconsistent pleas—Litigants not allowed to set up.*

The mother of the last Hindu owner filed a suit for a declaration of the invalidity of an alleged adoption made to him. The mother died and the reversioners, the present plaintiffs applied to be brought on record as her legal representatives and to continue the suit. The application was dismissed on the objection raised by the present defendant. The present plaintiffs thereupon brought a fresh suit. *Held*, that the defendant was estopped from contending in the second suit that the decision in the previous suit was erroneous, that the plaintiff's proper remedy was to continue the first suit and that the second suit was barred inasmuch as the first suit had abated. 17 M.L.J. 314 and 22 Mad. 394, Ref. (*Ayling and Krishnan*, JJ.) ARUNACHALAM PILLAI *v.* VELLAYA PILLAI. **26 M.L.T. 350=52 I.C. 465=9 L.W. 345.**

———S. 115—*Inconsistent pleas — Legal pleas.*

Per *Sadasiva Aiyar*, J.. *Quaere.*—Whether the principle that a party ought not to be allowed to take up inconsistent positions in pleadings in two successive proceedings involving the same question of rights can be availed of as regards pleas based on a pure abstract question of procedure law. 17 M.L.J. 314; 27 A. 544, Ref. to. *Quaere.*—Whether even assuming that the doctrine can be availed of in such cases its effect is to entitle the party taking the first or infructuous proceeding to the deduction of the time taken therein for the purpose of calculating the limitation

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period for the second proceeding. (*Sadasiva Aiyar and Spencer*, JJ.) ABDULL KOYA *v.* KALLUPURATH KANARAN. **33 M.L.J. 463=6 L.W. 696=43 I.C. 6=(1917) M.W.N. 822.**

———S. 115—*Inconsistent pleas — Trial issue—Evidence of custom.*

That the defendant does not object to a witness setting up a custom is no bar to his objecting to another witness giving evidence at a later stage. When parties have interpreted an issue once in a narrower sense they cannot insist on a wider interpretation at the next stage of suit but they may contest this case on such wider interpretation. 35 C. 232 (P.C.), Dist. Where an issue is ambiguous and a party once relies on a narrower interpretation he cannot subsequently be allowed to contend that wider interpretation is applicable. Such contention at an early stage may be allowed. Though a party does not object to one witness giving evidence of custom, he can object to another witness. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) NAICKER *v.* KAMALU AMMAL. **(1915) M.W.N. 968=2 L.W. 1214=19 M.L.T. 296=31 I.C. 883=30 M.L.J. 451.**

———S. 115—*Inconsistent pleas—Construction of decree.*

Where the Court has construed a decree in a particular manner and the decree has been enforced, the parties shall be estopped from claiming that it should be construed otherwise. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) LODD GOVINDA DOSS *v.* RAJAH OF KARVET NAGAR. **30 I.C. 357=29 M.L.J. 219.**

———S. 115—*Inconsistent pleas — Rule against.*

The rule that a party should not be allowed to take up inconsistent positions applies only where a party seeks to defeat his opponent by successive inconsistent positions or having obtained a benefit by adopting a position he afterwards tries to assume a different and contradictory position while retaining the advantage gained by his former position. (*Benson and Sundara Aiyar*, JJ.) VELUSWAMY NAICKER *v.* BOMMACHI NAICKER.
14 M.L.T. 229=25 M.L.J. 324=(1913) M.W.N. 776=21 I.C. 219=5 L.W. 299.

———S. 115—*Inconsistent pleas—Section not exhaustive.*

The section is not a complete statement of the whole law of estoppel. If a person without mistake takes a particular position in litigation he cannot be allowed to change that position and the principle will still apply in another suit growing out of the judgment of the first. (*Wallis*, J.) CHOTTA KRISHNASWAMI CHETTY *v.* SITARAMA CHETTY.
23 M.L.J. 335=17 I.C. 513=(1912) M.W.N. 967.
[On appeal from 21 I.C. 24=38 Mad. 374=25 M.L.J. 264.]

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——S. 115—*Inconsistent pleas — Party added on his own motion if can claim exoneration.*

A person, who is, on his own motion or without objection impleaded as a party to a mortgage suit, cannot, after an adverse decision is given against him, undo its effect by pleading that he is an unnecessary party and that he ought to be permitted to retire from the suit. (*Mitra*, A.J.C.) ADAM KHAN *v.* DATTA RAM. **47 I.C. 536.**

——S. 115—*Inconsistent pleas—Rule when applicable.*

Before applying the rule of estoppel, it is necessary to show that a previous inconsistent statement affected the result of that litigation. A person therefore who was not a proper party to a litigation is not estopped from subsequently pleading something inconsistent with a statement made by him in the course of the former litigation. (*Mittra*, A.J.C.) RAGHUNATH *v.* SHEOLAL. **39 I.C. 849 = 13 N.L.R. 69.**

——S. 115—*Inconsistent pleas—Remedy by execution or by suit.*

Where a party objects that a claim in a suit is barred by S. 47, Civ. Pro. Code and the objection is allowed, he cannot, in a subsequent application, for execution, set up that the remedy is by a suit. A suitor should not be allowed to take up a position inconsistent with that on which he has succeeded in defeating a claim in a previous proceeding brought to enforce it. (*Kanhaiya Lal and Daniels*, A.J.Cs.) BASTI BEGAM *v.* SAJJAD MIRZA. **47 I.C. 558 = 21 O C. 188.**

——S. 115—*Inconsistent pleas—Identity of land.*

A party who asserted, all along that the lands could be identified, cannot turn round and assert the contrary on appeal after judgment was given against him by the Court below. (*Adami and Ross*, JJ.) CHULAI MAHTO *v.* SURENDRA NATH CHATTERJEE. **1 P. 73 = 3 P L.T. 17 = 23 Cr. L J. 152 = 1922 P. 224.**

——S. 115—*Inconsistent pleas—Suit for rent—Subsequent denial of tenancy.*

A person who successfully sues another for rent cannot subsequently be heard to impugn that the deft. was a tenant. (*Das and Bucknill*, JJ.) JITAN MAHTON *v.* LALA BHAGWAN SAHAI. **51 I.C. 262 = 2 P.L.T. 780.**

——S. 115—*Inconsistent pleas—No estoppel—If only applying facts established at a trial.*

There is no scope for the application of the principle of estoppel by reason of inconsistent positions where the plaintiff is only applying the law to the facts established at the trial, though he failed to prove what he came to prove. (*Mullick*, J.) BANKEY BEHARY LAL *v.* BHAGWANDAS MARWARI. **34 I.C. 897.**

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——S. 115—*Inconsistent pleas—Acceptance of specific share in preliminary decree—Subsequent attempt to show its incorrectness—Whether estopped.*

In the preliminary decree a person accepted a specific share at the proper time. *Held* that he could not be permitted to show its incorrectness at the close of the case. (*Pratt*, J.C. *and Crouch*, A.J.C.) SIRDAR KHATUN *v.* MURAD ALI. **34 I.C. 928 = 9 S.L.R. 218.**

——S. 115—*Inconsistent pleas—Jurisdiction.*

A defendant will be barred from raising the question of jurisdiction when the case is transferred to the higher Court according to his objection in the lower Court. (*Pratt*, J.C. *and Crouch*, A.J.C.) KHAITOMAL LALCHAND *v.* FATEH MAHAMED. **32 I.C. 629 = 9 S.L.R. 164.**

——S. 115—*Inconsistent pleas.*

Where the defendants ejected plaintiff from the house she was occupying on the ground that it was not the family residence, they cannot deny her right to a residence in the family house in a subsequent suit by her for a right of residence. (*Pratt*, J.C. *and Crouch*, A.J.C.) LADHIBAI *v.* ISARMAL. **29 I.C. 25 = 8 S.L R. 306.**

Judgment.

——S. 115—*Judgment—Award—Estoppel.*

There was an agreement to partition property by arbitration, between two Mahomedan brothers. The award of the arbitrators was decreed by the Court. The award contained the terms that both had to contribute to their mother's maintenance, for exclusion from inheritance in her late husband's property. In a claim by one of the brothers after their mother's death, to her property, it was held that, by his acceptance of the award, he was estopped. (*Lord Dunedin.*) MAHOMED WALI KHAN *v.* MAHOMED MOHI-UD-DIN KHAN. **24 C.W.N. 321 = (1920) M.W.N. 189 = 11 L.W. 421 = 27 M.L.T. 204 = 58 I.C. 843 = 2 U.P.L.R. (P.C.) 43 (P.C.).**

——S. 115—*Judgment—Scope of estoppel.*

A judgment operates as estoppel as regards all the findings essential to sustain the judgment. If in a suit a question is raised by the pleadings and argued and if both parties invoke the opinion of the Court thereon, the judgment of the Court is not then *ultra vires* simply an issue, which strictly construed, embraces the whole of it. (*Mookerjee*, A.C.J. *and Fletcher*, J.) MIDNAPORE ZEMINDARI CO. *v.* JOGENDRA KUMAR. **62 I.C. 491 = 33 C.L.J. 186.**

——S. 115—*Judgment* — Res judicata—*Claim suit—Decision in—Auction-purchaser.*

If a claim suit under O. 21, R. 63, C.P.C., is decided against the claimant and the property is sold in auction the decision operates as an estoppel against the claimant in a

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subsequent suit, 36 M. 141, Rel. (*Jenkins*, C.J. *and Mookerjee*, J.) PEARI MOHAN *v.* DURLAVI DASSYA. **19 C.L.J. 441 = 20 I.C. 815 = 18 C.W.N. 954.**

——**S. 115—*Judgment—Findings in.***

The scope of an estoppel is not restricted to the judgment but extends to all facts in it and the judgment operates as estoppel for all the findings essential to sustain the judgment. 6 C.L.J. 621 at 631, Foll. (*Mookerjee*, J.) PANCHU *v.* CHANDRA KANTA. **12 I.C. 9 = 14 C.L.J. 220.**

——**S. 115 — *Judgment — Parties and privies—Creditor—Adjudication against debtor.***

A creditor is bound by an adjudication against his debtor on his title to property in the absence of fraud, collusion, etc. It is not necessary that the adjudication should have been on the merits. It is enough if the effect of the adjudication is to effectually deprive the debtor of his right to the property so long as the judgment stands. 33 M. 167 ; 36 M. 141; 29 M L.J. 558, Foll. (*Seshagiri Aiyar and Moore*, JJ.) RAHIM-UN-NISSA BEGAM *v.* SRINIVASA AIYANGAR **38 M L J. 266 = 54 I.C. 565 = 11 L.W. 139.**

[Recently overruled by Full Bench ; not yet reported.]

——**S. 115—*Judgment — Assignment of decree.***

Where one creditor files a suit to cancel an assignment as being in fraud of himself, the judgment passed in such a suit cannot be relied upon by another creditor (not a party to the said suit) as deciding upon his rights also. (*Oldfield and Bakewell*, JJ.) ARUMUGA MUDALIYAR *v.* KRISHNASWAMI NAIKEN. **42 I.C. 498.**

[Compare 33 Mad. 483 = 6 I C. 229 = 29 M.L J. 558 = 33 I.C. 452 = 30 I.C. 962 = 43 Mad. 381.]

——**S. 115—*Judgment — Estoppel—Binding on parties whose title is later in origin—Nullity—Jurisdiction.***

Where a link in the chain of a party's title consists of a decree of a Court of competent jurisdiction pronounced against the only person or persons who at the time of such decree had an interest which would entitle them to resist the plaintiff's title no person whose claim is subsequent in origin can challenge that decree or go behind it or challenge the plaintiff's title as at that date on any ground which was determined by that decree as a necessary step in its result. Per *Srinivasa Aiyangar*, J.:—It is open however to such party to show that the judgment is a nullity but the only ground on which a judgment as distinguished from a conveyance can be declared a nullity is the want of jurisdiction in the Court over the parties or the subject-matter. Where a judgment rendered after trial recognises the alienation of an office in the

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presence of all the parties interested in questioning the same a stranger cannot question it on the ground that such alienation is against public policy. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) SUPPA BHATTAR *v.* SUPPA SOKKAYA BHATTAR. **29 M L J. 558 = 18 M.L.T. 402 = (1915) M.W.N. 829 = 30 I.C. 962 = 2 L.W. 1005.**

[Overruled in a recent decision by the Full Bench ; not yet reported.]

——**S. 115—*Judgment—Revenue Court—Co-sharers—Partition.***

A partition effected through a Revenue Court among the co-sharers of a village creates a new title in each co-sharer to whom a share in the village is allotted and the parties will be precluded from subsequently setting up a title other than what they got at the time of partition. (*Lindsay*, J.C.) JANG BAHADUR SINGH *v.* CHANDREJ SINGH. **41 I C. 171 = 4 O.L.J. 365.**

——**S. 115—*Judgment—Consent decree or order.***

A consent order raises an estoppel and so long as it stands, neither party can give the go-bye to it, though it contains clauses bad in law. (*Das and Ross*, JJ.) RAMESHWAR SINGH *v.* HITENDRA SINGH. **6 P L.J. 208 = 62 I.C. 469 = 2 P.L.T. 268.**

——**S. 115—*Judgment—Vendor and purchaser—Sale.***

Where a vendor is a party to the impeachment of the purchaser's title and the suit is decreed against the purchaser, in a subsequent suit by the purchaser to recover the purchase-money, the vendor will be estopped from saying that his former admission was improvident. The purchaser not being at fault, the vendor is liable to refund the purchase-money. (*Roe and Ali Imam*, JJ.) BHATTU RAM *v.* GANGA BASAD GOPE. **47 I.C. 57 = 3 P. L.J. 388.**

Laches.

——**S. 115—*Laches—Sale—Agreement to reconvey after payment of the amount stated in the sale-deed—Redemption after a long time.***

Where land is transferred to another by a sale-deed with an agreement to reconvey after the payment of money stated on the sale-deed the vendor or his transferee cannot redeem the land after a very long time when there is evidence to show that the vendor or his transferee treated the transaction as a sale during all the time. (*Richardson and Shamsul Huda*, JJ.) NAZIR ALI *v.* COLLECTOR OF CHITAGONG. **57 I C. 681.**

——**S. 115—*Laches—Limitation.***

The principle of acquiescence by laches does not apply where a statutory period of limitation is prescribed. (*Jenkins*, C.J. *and Woodroffe*, J.) OSMOND BEEBY *v.* KHITISH CHANDRA. **41 Cal. 771 = 26 I.C. 284 = 18 C.W.N. 631**

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——S. 115—*Laches—No estoppel.*

Mere delay in filing a suit does not amount to estoppel. (*Scott Smith and Jones*, JJ.) BHAG MAL *v.* BHAGWAN DAS. **125 P.W.R. 1917= 41 I.C. 686= 11 P.R. 1918.**

——S. 115—*Laches—Mortgagee's laches in suing.*

A mortgagee, is not estopped from osserting his rights by laches in suing. (*Johnstone and Rattigan*, JJ.) ALLIANCE BANK *v.* KAHAN SINGH. **111 P.W.R. 1914=216 P.L.R. 1914= 25 I.C. 856=4 P.R. 1915.**

——S. 115—*Laches—Long inaction.*

Inaction for 11½ years does not estop a daughter from olaiming her property from her collaterals. (*Reid*, C.J. *and Rattigan*, J.) BUADITTI *v.* WARIN SINGH. **64 P.L.R. 1911=10 I.C. 819= 212 P.W.R. 1911.**

——S. 115—*Laches—In filing suit—Effect.*

A bailor is not entitled to any damages for wrongful use, beyond getting the value of the goods, if he is guilty of long delay in filing the suit after issuing the notice of demand. (*Fox*, C.J. *and Twomey*, J.) EBRAHIM AHMED MEHTER *v.* SAMUEL BATHALAR. **34 I.C. 297=9 Bur L.T. 224.**

Landlord and Tenant.

——S. 115—*Landlord and tenant—Ejectment.*

If in a suit for enhancement of rent the zemindar entered into a compromise stating that the tenancy was a fixed-rate tenancy and describing cartain of its incidents without mention of the grounds in cl. (*d*) of S 57 of the Agra Tenancy Act, he is subsequently estopped from asserting that it was not a fixed rate tenancy but only an occupancy tenancy in a suit for ejecting the tenant on the ground of his transferring the holding by way of mortgage. (*Holms*, S.M. *and Campbell*, J.M.) BHAGWAN SINGH *v.* DWARKA RAI. **29 I.C. 677.**

——S. 115—*Landlord and tenant—Ejectment.*

Where a zemindar agreed not to eject his tenant so long as rent was paid and in consideration received a large amount of arrears due from a previous tenant, he is estopped from ejecting his tenant so long as he paid rent. Such an agreement need not be in writing. (*Holms*, S.M.) YUSUFUZZMAN *v.* BODHAN. **29 I.C. 656**

——S. 115—*Landlord tenant—Rent, withholding of.*

Where the entry in the Thakbust khasra has been made in fraud of the owner, the withholding of the rent collected by thikadar of the proprietor does not create an estoppel or

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destroy the relationship of landlord and tenant. (*Ameer Ali*). JAGDEO NARAIN SINGH *v.* BALDEO SINGH. **3 Pat. L.T. 605= 36 C.L.J. 499=49 I.A. 399= 32 M L.T. 1=2 P. 38=45 M.L.J. 460= 1922 P.C. 272 (P.C.).**

——S. 115—*Landlord amd tenant—Status of parties.*

It is not open to the representatives of a lessor to prove that the status of the original lessee was other than what was described in the lease deed. (*Mookerjee and Rankin*, JJ.) ISWAR CHANDRA NATH *v.* GOUR SUNDAR NATH. **1923 Cal. 608.**

——S. 115—*Landlord and tenant—Tenancy by estoppel.*

Where Government is the owner of lands, no question of estoppel can arise against the landlord so as to interfere with the rights of a subsequent grantee from the Government. (*Sadasiva Aiyar and Spencer*, JJ.) SWAMIATHA MUDALI *v.* SARVANA MUDALI. **40 I.C. 581=33 M L.J. 370.**

——S. 115—*Landlord and tenant—Tenant it can dispute landlord's possession—Grant by Government.*

A tenant who has entered into possession under a lease from the landlord, is bound to restore the landlord's possession, before he can set up an independent title. Defendants took possession under a *kanom* deed from plaintiff and after execution of the *kanom*, plaintiff accepted quit-rent *pattahs* from Government in respect of some of the lands demised. *Held*, the arrangement between the plaintiff and Government do not take away the plaintiff's right to possession. 28 M. 526, Ref. (*Wallis and Ayling*, JJ.) NARAYANA NAMBUDRI *v.* MAHAMMAD. **15 I.C. 844.**

——S. 115—*Landlord and tenant—Not permitted to derogate from his grant—Applicability of the principle.*

The rule that a person cannot be permitted to derogate from his own grant, is not of universal application and certainly cannot apply to the case of a landlord where, by a *bona fide* surrender by the tenant, he acquires statutory right of re-entry into the land which was originally dismissed in favour of the tenant. (*Jwala Prasad and Ross*, JJ.) RAM ORAON *v.* DOMAN KALAL. **2 P. 898=4 P.L.T. 562= 1924 P. 100.**

——S. 115—*Landlord and tenant—Rent decree—Purchase of property subject to second decree—Effect.*

A decree-holder landlord who in execution of a rent decree purchases the holding subject to liability for a second rent decree is not estopped from proceeding against other properties in execution of the latter decree. (*Mullick and Macpherson*, JJ.) JUGAL KISHORE NARAYAN SINGH *v.* BHATU MODI. **1 P.L.R. 311=4 P.L.T. 640=2 P. 720= (1923) Pat. 205=1923 P. 517.**

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——S. 115—*Landlord and tenant—Silence of landlord—Conduct of lessee.*

Where the tenants knew perfectly well what their rights were and they were not deceived or encouraged in any away, the mere silence of the landlord or his inaction does not create an estoppel against him. Further to create an estoppel it must also be shown that he was aware of what his rights were and that he had the power to prevent tenants from building. (*Miller*, C.J. *and Mullick*, J.) BUDHAN TELI *v.* MADANMOHAN LAL. **3 P.L.T. 485 = 1923 P. 111.**

——S. 115—*Landlord and tenant—Raiyati holding—Record as—Zerait by Collector—Co-sharers, estoppel.*

Where the plaintiffs who were co-sharers with the defendants allowed the Collector to record their raiyati holding as the zerait land of the latter, *held* that a question of estoppel will arise. (*Mullick and Atkinson*, JJ.) BALADEO SAHAI *v.* BRAJNANDAN SAHAY. **3 P.L.W. 266 = 43 I C. 359 = (1918) Pat. 164.**

Licensor.

——S. 115—*Licensor and licensee—Employees and contracting parties—Assignee or licensee of a right.*

The rule of estoppel applies also to employees and contracting parties generally who therefore, cannot accept the benefits of the contract and yet when called upon to perform their duties under it, repudiate it as made without right. The assignee or licensee of a right accepted and acted under, is, accordingly precluded from denying the authority from which the right proceeds. (*Mookerjee and Beachcroft*, JJ.) LAKHAN JENA *v.* ARJUN NAIK. **18 C.W.N. 1194 = 24 I.C. 387 = 19 C.L.J. 313.**

——S. 115—*Licensor and licensee—License under Burma Municipal Act.*

A licensee is estopped from objecting to the terms of a license which gives him rights and privileges which he would not enjoy without such license. (*Parlett*, J.) S.C. PAUL *v.* EMPEROR. **18 Cr. L.J. 1012 = 42 I.C. 756 = 11 Bur. L.T. 208.**

Minor.

——S. 115—*Minor—Misrepresentation as to age—Liability.*

Where a minor executes a mortgage fraudulently representing himself to be a major, there is no estoppel precluding him from afterwards showing that he was a minor at the time. The mortgagee cannot obtain any relief against the minor on the ground of fraud. (1914) 3 K. B. 607, Ref. (*Lord Shaw.*) MAHOMED LYODOL ARIFFIN *v.* YCOHOOL GARK. **(1916) 2 A.C. 575 = 21 C.W.N. 257 = (1917) M.W.N. 162 = 19 Bom. L.R. 157 = 86 L.J.P.C. 16 = 115 L.T. 564 = 32 T.L.R. 678 = 39 I.C 401 = 43 I.A. 256 (P.C.)**

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——S. 115—*Minor—Misrepresentation.*

A minor is not liable for money obtained on pro-note by him by misrepresenting his age. (*Richards*, C.J. *and Banerjee*, J.) DHARA SINGH *v.* GAYAN CHAND. **45 I.C. 761 = 16 A.L.J. 441.**

——S. 115—*Minor—Representation—Minor not bound.*

The false representations made by the father, brother or cousin of a minor even though any of those persons acted as the natural guardian of the minor, do not impose any liability on the minor. (*Tudball and Rafique*, JJ.) DABI DAS *v.* TULSHI RAM. **19 I.C. 55 = 11 A.L.J. 202.**

——S. 115—*Minor—Execution of pro-note representing himself to be major—Suit on pro-note.*

If it is proved that the defendant represented to the plaintiff that he was a major, and the plaintiff acting on that representation lent money on the promissory note, then the Court is entitled to consider the question whether in a suit on the promissory note the defendant is estopped from pleading his minority. That, of course, would depend upon the evidence and facts of the case. (*Macleod*, C.J. *and Shah*, J.) JASRAJ BASTIMAL *v.* SADASHIV MAHADEY WALEKAR. **46 B. 187 = 1923 Bom. 169.**

——S. 115—*Minor—Minor passing promissory note on representation that he is a major.*

Where a minor represents to another that he is a major, and that other lends money on a promissory note signed by the minor, the minor may be, in a suit on the promissory note, estopped from pleading his minority. (*Macleod*, C.J. *and Shah*, J.) JASRAJ *v.* SADASHIV. **61 I.C. 457 = 23 Bom. L.R. 975.**

——S. 115—*Minor—Conveyance by—Vendor aware of real facts.*

Where the deft. was the plff.'s brother-in-law, *held* that the plff. is not estopped from denying she was a major at the date of a sale executed by her to the deft., since the latter must be presumed to have known her age and not to have been deceived by her representations as to her age. (*Macleod*, C.J. *and Heaton*, J.) GURUSHIDDSWAMI *v.* PARAWA DUNDAYA NARENDRA. **44 Bom. 175 = 55 I.C 271 = 22 Bom. L.R. 49.**

——S. 115—*Minor—Representation that he is major—'Person,' meaning of.*

The word 'person' in the section is used in its ordinary sense and includes a minor. It does not admit of any limitation so as to exclude from its connotation all persons declared under the Contract Act incompetent to contract. (*Beaman and Heaton*, JJ.) DADASAHEB DASRATHRAO *v.* BAI NAHANI. **41 Bom. 480 = 41 I.C. 180 = 19 Bom. L.R. 561.**

——S. 115—*Minor—Share-holder of a company—Receipt of dividend.*

Where a shareholder in a limited company was a minor at the time of the allotment of

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shares to him, and after attaining majority received dividends and raised no objection to his name being included in the register *held* that he is estopped from denying as against the company's representative that he is a share-holder. (*Scott and Davar*, JJ.) FAZULBOY JAFFER *v.* CREDIT BANK. **39 Bom. 331=27 I.C. 335=16 Bom. L.R. 730.**

——S. 115—*Minor—Misrepresentation as to age—Knowledge.*

Where a defendant, a major, is misrepresented as a minor and a guardian *ad litem* was appointed for him in the suit and he allows the suit, execution proceedings which resulted in the sale being allowed to proceed without objection, *held*, that he was estopped, from suing to set aside the decree. (*Mookerjee and Panton*, JJ.) SARAT CHANDRA *v.* BIBHA VVATI DEBI. **66 I.C. 433 (2)=34 C.L.J. 302.**

——S. 115 — *Minor — Contract Act — Estoppel with a minor.*

The law of estoppel does not operate in supersession of, but is subject to the limitations imposed by other laws, *e.g.*, Contract Act and a minor's contract being void, he is not estopped. (*Chatterjee and Newbould*, JJ.) GOLAM ABDUR *v.* HEM CHANDRA. **32 I.C. 388=20 C.W.N. 418.**

——S. 115—*Minor—Acts of guardian.*

The law of estoppel does not apply to an infant except in case of fraud committed by him. An infant cannot be estopped by the acts or admissions of his guardian or of another person. 29 A. 292 ; 34 A. 22 ; 26 B. 433, Ref. (*Mookerjee and Beachcroft*, JJ.) RAM CHARAN DAS *v.* JOY RAM MEGHI **16 C.L.J 185=16 I.C. 825=17 C.W.N. 10.**

——S. 115—*Minor*—'*Person*'—*Meaning.*

S. 115 of the Evidence Act does not apply to contract by minors. 'Person' in that section means 'person competent to contract.' 26 C. 386, Foll. (*Caspersz and Chatterjee*, JJ.) SURENDRA NATH ROY *v.* KRISHNA SAKHI DASI. **15 C.W.N. 239=9 I.C. 110=13 C.L.J. 228.**

——S. 115—*Minor—Misrepresentation as to age—Contract void—No duty to restore benefit.*

Minor's contract is void *ab initio*. A false representation by a minor as to his age made to a person who knows it to be false is not such a fraud as would take away the privilege of infancy. Minor is not bound to restore benefits obtained by him before avoiding the contract. (*Broadway*, J.) BISHEN SINGH *v.* BISHNA. **1924 L. 294.**

——S. 115—*Minor, false representation by—Truth known to both parties—Effect.*

A minor who makes false representation made to a person who knows it to be false is not estopped from taking away the privilege of infancy. There can be no estoppel where the truth of the matter is known to both the parties. (*Abdul Raoof*, J.) HARNAM SINGH *v.* MARAINA. **66 P.W.R. 1921.**

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——S. 115—*Minor—Representation as to age.*

If a minor obtains a loan on the representation that he is of age, he cannot plead his infancy as defence to a suit on the loan. (*Le-Rossignol*, J.) HARJI MAL *v.* ABDUL HALIM. **60 I.C 267.**

——S. 115—*Minor.*

Where a minor was, in appearance, old enough to act for himself and no fresh guardian was appointed after the resignation of the guardian appointed under the Guardian and Wards Act and where the District Judge ordered that his minority would continue till the age of 21 and where he entered into monetary dealings with plaintiff and represented himself to be of full age and misled the plaintiff by that false representation to advance a loan on the defendant executing a bond ; *held*, that the plea of minority cannot be heard and that S. 115 of the Evidence Act applied to the case. 25 Cal. at page 393, Foll.; 25 Cal. 616 and 30 Cal. 539 P.C., Dist. 24 Cal. 265; 26 Cal. 381; 25 Cal. 371 F.B. and 76 P.R 1910, Not Foll. (*Chevis*, C J. *and Le-Rossignol*, J,) WASINDA RAM *v.* SITA RAM. **1 Lah. 389=59 I.C. 393=51 P.W.R. 1920.**

——S. 115—*Minor—False representation as to age—Mortgage.*

A mortgage made by a minor is wholly void and the mortgagee is not entitled to enforce his security created under the mortgage. The minor's false representation that he was of full age, to the mortgagee who knew it to be false is not such a fraud as to take away the privilege of infancy. 30 Cal. 539 (P.C.), Foll. ; 2 Cal. W.N. 18, Dist. (*Broadway and Abdur Raoof*, JJ.) HARNAM SINGH *v.* NARAINA. **162 P.R. 1919=54 I.C. 876=2 U.P.L.R. (Lah.) 40.**

——S. 115—*Minor—Guardian ad-litem if bound by estoppel against himself*—Ad litem *of minor if estopped from suing in his personal capacity about same right.*

A decree against a minor represented by his guardian *ad litem* can be contested by the guardian in his individual and personal capacity on rights peculiarly his own ; and the fact that he acted as guardian *ad litem* before is no estoppel preventing him from claiming his right. (*Kensington and Beadon*, JJ.) GANGA RAM *v.* NARAIN DAS. **1 P.R. 1914=22 I.C. 955=118 P.L.R. 1914.**

——S. 115—*Minor—Estoppel against.*

There is no estoppel against a minor who enters into a contract since the contract is void. (*Spencer and Bakewell*, JJ.) JAMBAGULACHI *v.* RAJAMANNASWAMI NANDALWAR. **57 I.C. 678=11 L.W. 596.**

——S. 115—*Minor—Lease taken by guardian—Possession of minor if adverse.*

Though S. 115 of the Evidence Act does not create any estoppel against a minor in the case of a contract or transfer of property involving

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such minor, yet when he enters into possession of property on a lease obtained on behalf by his guardian he cannot be allowed to set up his title to the property as a bar to a suit in ejectment on the expiry of the lease. (*Abdur Rahim and Spencer*, JJ.) PONNUSWAMI PILLAI *v.* SUBRAMANYA PILLAI. **53 I.C. 412.**

———S 115—*Minor—Misrepresentation as to age—Liability to refund.*

Where a minor mortgagor enters into the transaction misrepresenting his age he is under no equitable obligation to refund the money when the transaction turns out to be void. (1914) 3 K.B. 607; (1916) 2 A.C. 575; 43 I.C. 908, Ref. (*Wallis*, C.J. *and Sadasiva Aiyar*, J.) GURUSWAMI PANTULU *v.* BUDHAKARAN LAL. **26 M.L.T. 245=53 I.C. 14=10 L.W. 225.**

———S. 115—*Minor—Estoppel.*

Quære:—Whether a minor who obtains a benefit under a conveyance by him should be refused the relief of cancellation of the sale because he misrepresented his age at the time and thereby induced the other party to part with his property. (*Coutts-Trotter and Seshagiri Aiyar*, JJ.) RAGHVAYYA *v.* SUBBAYYA. **43 I.C. 908=7 L.W. 124.**

———S. 115—*Minor—Contract—Estoppel.*

A minor is not estopped from setting up his minority. As judicially interpreted the Contract Act makes contract entered into by a minor void and the Court should not be compelled to pronouce them valid by the provisions contained in the Evidence Act. It is not apparently the case that the word 'person' in the section does not include a minor or certified lunatic or other person under a disability to contract owing to imbecility of judgment. But it might be held that such a person could not be held to have intentionally caused anything. When the law of the contract declared that an infant would not be liable upon a contract or in the statute of fraud in connection with a contract, he cannot be made liable upon the same contract, by means of an estoppel; in other words there can be no doubt about the general law that the principle of estoppel which is provision of adjective law cannot be invoked to defeat the plain provision of a statute. Per *Raymond*, A.J.C.—There is no distinction in principle between a minor plaintiff and minor defendant and if in the case of a contract entered into by a minor the principle of estoppel is to be applied to him whether he is the plaintiff or defendant it would be tantamount to binding him by an agreement which the legislature has declared to be void and hence unenforceable. (*Kennedy*, J.C., *Raymond and Kemp*, A.J.Cs.) MT. HURI *v.* ROSHAN KHUDABUX. **16 S.L.R. 112=1923 Sind 8.**

———S. 115—*Minor—Contract—Conveyance.*

Where in a suit on a transfer of immoveable property or a contract of sale, the execution of

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the deed of transfer or the contract of sale, is admitted but infancy at the time of execution, is set up as a defence, the defendant is under S. 115 *prima facie* estopped from denying his authority. The deft. should first prove his minority before claiming exemption from estoppel. 26 B. 109, Foll.; 4 S.L.R. 250, Dist. (*Crouch and Hayward*, A.J.Cs.) SOBHANMAL *v.* BACHAL. **34 I.C. 890=9 S.L.R. 214.**

Mortgagor and Mortgagee.

———S. 115—*Mortgagor and mortgagee—Personal decree claimed by debtor.*

If a person professes to have an interest in a property whatever interest he may have is bound by the mortgage and must be enforced against him and he cannot claim that a personal decree should have been passed. (*Lord Phillimore.*) BHOLANATH SEN *v.* BALARAM DAS. **31 M.L.T. 306=27 C.W.N. 607=18 L.W. 48=(1923) M.W.N. 525=1922 P.C. 382 (P.C.).**

———S. 115—*Mortgagor and mortgagee—Mortgagee*—Deshgat Inams—*Enfranchisement—Mortgagee in possession estopped from question—Mortgagor's right.*

Deshgat Inam lands were mortgaged in 1855 and in 1856 forfeited by Government. The mortgagee continued in possession and paid assessment to Government. In a suit to redeem in 1901; *Held*, that the effect of the order of forfeiture was merely to convert the lands from a service tenure into lands liable to pay assessment to Government. The plff. was not deprived of all right and title to the lands and the relation of mortgagor and mortgagee which existed between the parties was not extinguished. 1 Bom. H.C.R. 22; 9 B. 119. Foll. The defendant who came into possession of the lands as mortgagee of the plaintiffs could not turn round after the order of forfeiture and take the benefit of it and challenge the validity of the mortgage in virtue of which his title to the land as mortgagee had begun. (*Chandavarkar and Batchelor*, JJ.) GURBASAPPA SANGAPPA *v.* RANGA VENKATESH. **36 Bom. 539=16 I.C. 348=14 Bom. L.R. 563.**

———S. 115—*Mortgagor and mortgagee—Denial of title.*

It is not open to a mortgagee who accepts a mortgage from a mortgagor to question the title of the latter to redeem the property on payment of the sum due under the mortgage. (*Mookerjee and Beachcroft*, JJ.) SURENDRA NATH *v.* KSHITENDRA MOHUN. **53 I.C. 29=29 C.L.J. 434.**

———S. 115—*Mortgagor and mortgagee—Attornment of mortgagee to superior landlords—Effect of—Redemption suit.*

A mortgagee is not entitled to resist a claim for redemption impugning the title of the mortgagor to the mortgaged property. But it is

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open to the mortgagee to establish that the title of the mortgagor has expired since the creation of the mortgage, *i.e.* that the equity of redemption is no longer vested in him so as to entitle him to redeem the mortgage. As between a mortgagor and a mortgagee, the atrotment by the latter to the superior landlord cannot in any way prejudice the rights of the mortgagor. (*Mookerjee and Richardson*, JJ.) ABHURAM SIL *v.* HARA CHAND DAS. **29 I.C. 746.**

———S. 115—*Mortgagor and mortgagee—Invalidity of mortgage—Plea of, if open.*

A mortgagor has no right to set up against his mortgagee the title of a third person. Even a trustee cannot set up as a defence for himself against the mortgagee that the mortgaged property is trust property which he had no right to mortgage. The principle however is inapplicable when the mortgage is void as contrary to statute. (*Mookerjee and Beachcroft*, JJ.) MAHAMAYA DEBI *v.* HARIDAS HALDAR. **42 Cal. 455 = 19 C.W.N. 208 = 27 I.C. 400 = 20 C.L.J. 183.**

———S. 115—*Mortgagor and mortgagee—Occupancy holding.*

Where a portion of a holding was mortgaged by the tenant of a non-transferable holding who subsequently sold the same to the plaintiff who sued for possession. *Held*, that he could not repudiate the mortgage as beyond his competence. (*Jenkins*, C.J. *and Mookerjee*, J.) SHEIKH JAWAHAR *v.* SHEIKH NAZIR. **21 I.C. 960 = 18 C.L.J. 512.**

———S. 115—*Mortgagor and mortgagee—Denial of title—Purchaser of equity of redemption who is also a co-sharer.*

The purchaser of an interest in the equity of redemption is estopped from denying the title of the mortgagee to the interest created under the mortgage. But if the purchaser has a different capacity such as that of a co-sharer with the mortgagor in the properties mortgaged he can question the title in that capacity. (*Mookerjee and Beachcroft*, JJ.) GIRIJA NATH ROY CHOWDHURY *v.* UPENDRA NATH PAL. **20 I.C. 241.**

——— S. 115—*Mortgagor and mortgagee—Suit by mortgagor for sale—Plea of* jus tertii.

In defence to a mortgagee's suit for sale the mortgagor or his representative is not entitled to plead that the mortgagor had no power to mortgage the whole or part of the property which he purported to mortgage; nor is the plea of *jus tertii* open to him. (*Mookerjee and Beachcroft*, JJ.) RAM JIBAN SHAH *v.* DHIKU SINGH. **16 I.C. 246 = 16 C.L.J. 264.**

———S. 115—*Mortgagor and mortgagee.*

A mortgagor cannot deny his mortgagee's title and the existence of the lien which he has created nor can he defeat its enforcement against the property upon which it was placed. The question of the mortgagee's right to mortgage cannot arise in a suit between the mortgagee and the mortgagor. 10 C.L.J. 150, Rel. (*Mookerjee and Teunon*, JJ.) SHYAMA CHARAN BHATTACHARYYA *v.* MOKHADA SUNDARI DEBI. **13 C.L.J. 481 = 10 I.C. 49 = 15 C.W.N 703.**

———S. 115—*Mortgagor and mortgagee—Not estopped by deed when other party alleges deed as void.*

The estoppel against a mortgagor based upon the contract between the parties, can have no operation when the contract is alleged by the other party to be void. The other party cannot both approbate and reprobate the mortgage. (*Rattigan*, J.) GHULAM MUHAMMAD *v.* LATIF AHMAD KHAN. **17 P.R. 1912 = 56 P.W.R. 1912 = 14 I.C. 495 = 88 P.L.R. 1912.**

———S. 115—*Mortgagor and mortgagee—Estoppel.*

The mortgagee cannot deny the title of the mortgagor which he has acknowledged, if the only ground for his so denying is that he was not let into possession by the mortgagor. 40 Mad. 561, Foll. (*Seshagiri Aiyar and Napier*, JJ.) GOVINDA MENON *v.* KUPPAN NAMBUDRIPAD. **37 M.L.J. 617 = 24 M.L.T. 472 = 49 I.C. 312 = (1919) M.W.N. 20.**

———S. 115—*Mortgagor and mortgagee—Inam—Inalienability.*

A mortgagee defendant holding under a mortgage by an inamdar is entitled to contend by reason of the mortgage, that the plaintiff, a purchaser in auction-sale of such inam, acquired no title to the inam, as the inam grant is inalienable. (*Abdur Rahim and Ayling*, JJ.) VENKATARANGACHARULU *v.* KRISHNAMACHARULU. **12 I.C. 710 = (1911) 2 M.W.N. 473.**

———S. 115—*Mortgagor and mortgagee—Absolute title—Setting up of—Liability to be redeemed.*

Merely setting up an absolute title to the mortgaged property will not enable a mortgagee to acquire any higher right as against the mortgagor. Purchase of mortgaged property from a third party could not enlarge mortgagee's right so far as his obligation to surrender the land to the demisor was concerned. (*Benson and Sundara Aiyar*, JJ.) KADAKAM VALLE MARU *v.* OTHENAN NAIR. **10 I.C. 339 = (1911) 2 M.W.N. 61.**

———S. 115—*Mortgagor and mortgagee.*

A mortgagor cannot dispute the validity of a mortgage executed by himself. (*Benson and Sundara Aiyar*, JJ.) KUMARA VENKATA PERUMAL *v.* THETHA RAMASAWAMY CHETTY. **35 Mad. 75 = (1911) 1 M.W.N. 290 = 9 M.L.T. 487 = 9 I.C. 875 = 21 M.L.J. 709.**

———S. 115—*Mortgagor and mortgagee—Representative of mortgagee.*

A mortgagee sued for possession of the mortgaged property against a person as the successor

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of the original mortgagor and obtained a decree. Subsequently when the said representatives sued the mortgagee for redemption, the mortgagee disputed his right to represent the original mortgagor; *Held*, that the mortgagee was precluded from raising the plea. (*Stuart*, J.C.) GOVIND *v.* CHOKHE.

6 O.L.J. 1=49 I.C. 356=1U.P.L.R. (J.C.) 22.

———**S. 115**—*Mortgagor and mortgagee—Title to redeem.*

A mortgagee will be estopped from going behind a mortgage and contesting the mortgagor's right to redeem. (*Stuart and Kanhaiya Lal*, A.J.Cs.) JANGI RAM *v.* SHEORAJ SINGH. **30 I.C. 234=2 O.L J. 388.**

[Also 29 I.C. 746.]

———**S. 115**—*Mortgagor and mortgagee—Mortgage of endowed property—Mortgagor if estopped from denying title.*

Where the mortgage deed clearly purports to be executed by the mortgagor as the proprietor of the property in his own interest, he is estopped from denying the interest which he represented as his own proprietary right in the deed. He cannot set up against the mortgagee the paramount title of a third party even though the latter might eventually prove a right to recover the property. If the Hindu public or anybody else is interested as proprietor of the mortgaged property or has a paramount title adverse to that of the mortgagor, the decision in the mortgage suit will not be binding upon such a person and it is competent to such person to take proper steps at the proper time to protect his interests. The mortgagor's plea that the mortgaged property is held in trust for the Hindu public is clearly outside the scope of the mortgage suit, so far as it asserts a third person's title. (*Dawson Miller*, C.J. *and Foster*, J.) BABU BRIJ RATAN DAS *v.* RAGHUNANDAN GIR.

1923 Pat. 49=1 P.L.R. 225=4 P.L.T. 457=1923 P. 203.

———**S. 115**—*Mortgagor and mortgagee—Title, denial of—Estoppel.*

A mortgagee is not in all cases estopped from denying the title of his mortgagor. (*Pratt*, J.C. *and Crouch*, A.J.C.) NUR MAHOMED *v.* KESSUMAL. **20 I.C. 533=7 S.L.R. 11.**

None against statute.

———**S. 115**—*None against statute—Oral gift—Actings of parties.*

As there was no registered deed of gift as required by S. 123 of the T.P. Act the gift was not complete in law and the title to the land still vested in the plaintiff donor. The mere consent of the plaintiff's father to make a gift of the land had not the effect of vesting the land in the Municipality, and inasmuch as defendant had occupied the land and constructed a part at any rate of the road before the plaintiff's father was induced to make an oral gift of the land, the plaintiff was not estopped from denying the validity of the gift. (*Shah and Hayward*, JJ.) KUVERJI KAVASJI *v.* THE MUNICIPALITY OF LONAVLA.

58 I.C. 403=45 Bom. 164=22 Bom. L.R. 634

EVIDENCE ACT (I of 1872), S. 115—None against statute.

———**S. 115**—*None against statute.*

An Act of the legislature is not affected by estoppel. (*Beaman and Hayward*, JJ.) SHRIDHAR BALKRISHAN WAIDYA *v.* BABAJEE MULA AGARYA. **38 Bom. 709=28 I.C. 134=16 Bom. L R. 585.**

———**S. 115**—*None against statute—Unregistered Lease—No specific performance.*

The non-registration of the document will not stand in the way of an action by the lessee against the lessor for money had and received to his use. (*Rankin*, J.) SANJIB CHANDRA *v.* SANTOSH KUMAR. **39 Cal. 507=26 C W.N. 328=1922 Cal. 436.**

———**S. 115**—*None against statute.*

There cannot be any estoppel against a statute and a statutory defence not set up in a prior suit can be set up in a subsequent suit. (*Suhrawardy and Cuming*, JJ.) NAFAR CHANDRA PAL CHOWDHURY *v.* BHUSHI MOLLA. **65 I.C. 531.**

———**S. 115**—*None against statute.*

The principle of estoppel does not apply to the plain provisions of S. 82 (2) of the B.T. Act. (*Chatterjee and Newbould*, JJ.) AKIMUDDI BEPARI *v.* CHINTAHARAN MUKHOPADHYAY. **51 I.C. 403=23 C.W.N. 437=[But See 25 C.W.N. 4=32 C.L.J. 296 (F.B.).]**

———**S. 115**—*None against statute—Mortgage—Inclusion of fictitious property—Mortgagor—Estoppel.*

In a suit on the mortgage defendants set up that a plot of land not belonging to the mortgagor was fictitiously included so as to give jurisdiction to the registering officer and that the registration was void. *Held*, that the burden of disproving the existence of the plot of land lay on the defts. The defendants failed to discharge the onus and therefore the suit should be decreed with costs. The principle of estoppel cannot be invoked to defeat the plain provisions of a statute. 29 Cal. 654 and 13 C.W.N. 817 (P.C.) Dist. (*Sanderson*, C.J. *and Woodroffe*, JJ.) SUDHIR CHANDRA SETT *v.* SYED ABDULLA-UL-MUSAVI. **48 I.C. 520=22 C.W.N. 894.**

———**S. 115**—*None against the statute—Sale—Illegality—Judgment-debtor's right to apply.*

Where, overruling the judgment-debtor the Court orders the sale of certain property in execution contrary to the provisions of a statute, the judgment-debtor is entitled to plead

EVIDENCE ACT (I of 1872), S. 115—None against statute.

its invalidity as being opposed to law. (*Chitty and Teunon, JJ.*) LAKSHMI BIBI KUJRANI *v.* ABTAL BEHARD HALDAR. **21 I.C. 117 = 40 Cal. 584.**

———S. 115—*None against statute.*

The doctrine of estoppel cannot defeat the express provisions of a Code. (*Coxe and Chatterjee, JJ.*) SHAMLAL CHATTERJEE *v.* HAZARIMAL BABU. **13 I.C. 326 = 15 C.L.J. 451.**

———S. 115—*None against statute.*

Defendant can plead that he was incompetent to alienate property sold by him. At least plaintiff cannot succeed where his title is against statute law. (*Ghose and Pargior, JJ.*) ACHAMULLA SIRKAR *v.* CHOLAMUNNASSA BIBI. **10 I.C. 928 = 13 C.L.J. 479.**

———S. 115—*None against statute—Statutory right.*

A mortgagor judgment-debtor's right to have a decree absolute to be passed is for his benefit and it is open to him to contract himself out of it as it is not against public policy. If he does so he will be estopped from pleading want of the decree absolute. (*Mookerjee and Caspersz, JJ.*) BISWANATH PROSAD *v.* BHAGWAN DIN. **10 I.C. 536 = 14 C.L.J. 648.**

———S. 115—*None against statute.*

Estoppel cannot defeat an act of the legislature. (*Mookerjee and Coxe, JJ.*) ABDUL AZIZ *v.* KANTHA MULLICK. **38 Cal. 512 = 10 I.C. 467 = 13 C.L.J. 693.**

———S. 115—*None against statute—Monopoly—Validity—Prior holder if can question.*

In a suit for damages by the holder of a monopoly for a certain year against the prior holder for infringement of his rights, the latter is not estopped from contending that the monopoly itself is invalid. (*Martineau, J.*) RAMJI DAS *v.* JAI GOPAL. **1923 Lah. 244.**

———S. 115—*None against statute.*

There is no estoppel against a statute; the Court is bound to enforce a statute despite the conduct of the parties in consenting to a decree. (*Abdur Rahim and Oldfield, JJ.*) RAMACHANDRA SURU *v.* AKELLA VENKATALAKSHMI NARAYANA. **(1919) M.W.N. 332 = 50 I.C. 577 = 37 M.L.J. 65.**

———S. 115—*None against statute.*

The rule of estoppel from pleadings cannot defeat the provisions of a statute. 38 M. 374, Foll. (*Kumaraswami Sastri and Phillips, JJ.*) RAMAMURTHI *v.* GOPAYYA. **40 Mad. 701 = 31 M.L.J. 231 = 20 M.L.T. 129 = 35 I.C. 575 = 4 L.W. 48.**

———S. 115—*None against statute—Limitations to the doctrine—No estoppel against law.*

Unless the parties by their agreement make a law for themselves in violation of the law of the land the section should be held to be applicable to such agreement, and the doctrine that there can be no estoppel against a plain provision of law shall not be taken too. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) LODD GOVINDA DAS *v.* RAJAH OF KARVETNAGAR. **30 I.C. 357 = 29 M.L.J. 219.**

———S. 115—*None against statute—Oral agreement to lease—Eviction of tenant.*

Unless the lease is registered under S. 17 of the Registration Act, a mere oral agreement to lease does not estop the supposed landlord from evicting the tenant as there can be no lease in law without registration. (*Ayling and Tyabji, JJ.*) GOPALA KRISHNA AIYAR *v.* SUKIRTHA THEENTHARA. **24 I.C. 790.**

———S. 115—*None against statute.*

The doctrine of estoppel between parties litigating does not apply to an express statutory provision so as to nullify its effect. 24 B. 575, Foll. (*Mookerjee and Beachcroft, JJ.*) JOGENDRA NATH SARKAR *v.* PROBHAT NATH CHATTERJEE. **21 I.C. 926 = 19 C.L.J. 126.**

———S. 115—*None against statute.*

There can be no estoppel against an Act of legislature. An agreement not to take advantage of the statute of limitation cannot affect the original cause of action unless it in effect acknowledges liability. 36 Cal. 20; 38 Cal. 512, Foll. There can be no estoppel against an Act of the legislature like the Limitation Act and the plea of limitation may be set up though there is an agreement to waive it. 38 C. 512 Foll. (*White, C.J and Oldfield, J.*) SITARAM CHETTY *v.* CHOTA KRISHNASWAMI CHETTI. **38 Mad. 374 = 25 M.L.J. 264 = 21 I.C. 24 = (1913) M.W.N. 676.**

[Reversing 23 M.L.J. 335 = 17 I.C. 513 = (1912) M.W.N. 967.]

———S. 115—*None against statute—Rule—Applicability.*

The rule that there can be no estoppel against a statute, does not apply unless it is within the knowledge of both the parties that a statutory provision is being violated. 16 C.W.N. 585, Appr. (*Benson and Sundara Aiyar, JJ.*) VEERAPPA *v.* KADIRESAN.

(1913) M.W.N. 525 = 21 M.L.J. 664 = 20 I.C. 385 = 14 M.L.T. 237.

———S. 115—*None against statute—Award—Objections.*

A judgment ordering a decree on an award on the receipt of the award from the arbitrators but before the expiry of the period of time allowed for filing an application to set aside the award, on the ground that the parties have in the meantime stated that they have no objections to urge or have already urged their objections, is illegal as such statements cannot estop the parties from shifting their grounds and withdrawing the statements within the

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time allowed on the ground of fraud or mistake. (*Pratt*, J.C. *and Boyd*, A J.C.) SRIKISHEN *v.* RETURMAL PARIOMAL. **34 I.C. 815 = 9 S.L.R. 183.**

———S. 115—*None against statute.*

A void transaction cannot be validated by any amount of acquiescence. It is doubtful if S. 115 applies to transaction expressly declared to be void by the legislature. (*Pratt*, J.C. *and Hayward*, A.J.C.) MIR MAHOMED *v.* KHUHOMAL. **21 I C. 517=7 S.L R. 58.**

None if truth known.

———S. 115—*None if truth known—Effect—Act upon such belief—Meaning of.*

The doctrine of estoppel does not apply where all the facts are within the knowledge of both parties. The language of the section can be extended to the encouragement of an erroneous belief as in *Ramsden* v. *Dyson*. The phrase "act on such belief" means that the party must have changed his position with reference to the subject-matter of the representation. (*Pratt*, J.) WILLIAM JACKS & CO. *v.* JOOSAB MAHOMED. **25 Bom. L.R. 1170 = 48 Bom. 38 = 1924 Bom. 115.**

———S. 115—*None if truth known.*

No estoppel comes into being where both the parties are equally aware of the facts. (*Batchelor and Rao*, JJ.) RANCHHODLAL *v.* SECRETARY OF STATE. **35 Bom. 182 = 9 I.C. 765 = 13 Bom. L.R. 92.**

———S. 115—*None if truth known—Silence—Duty to speak—Negligent omission.*

The acquiescence or estoppel which will deprive a man of legal rights must amount to fraud. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. The element or the requisites necessary to constitute fraud of that description are these:—In the first place, the plaintiff must have made a mistake as to his legal rights. Secondly the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief. Thirdly the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which it calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done either directly or by abstaining from asserting his legal right. Where all these elements

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it but nothing short of this will do. Where the defendants as in the present case were under no mistake about their rights, they were perfectly aware that the land belonged to the plaintiff and they wrote a letter to the plaintiff asking for permission to construct an over bridge, there is no room for any estoppel. (*Chatterjee and Cuming*, JJ.) HEMANGINI DEVI *v.* RAJAH BEJOY SINGH DUDHURIA. **73 I.C. 223.**

———S. 115—*None if truth known—Negligence—Effect.*

The plea of estoppel cannot be raised by a person put on notice who could, by reasonable diligence have found out the real facts. (*Fletcher and Shamsul Huda*, JJ.) SARDA PROSAD ROY *v.* ANANDA MOY DUTTA. **46 I C. 228.**

———S. 115—*None if truth known.*

Unless the person to whom the false statement is made does not know the real facts and is misled by the statement, there is no estoppel. (*Chatterjee and Newbould*, JJ.) GOLAM ABDIN *v.* HEMCHANDRA. **32 I.C. 388 = 20 C.W.N. 418.**

———S. 115—*None if truth known—Facts known to party.*

If the true state of facts were known to a person or if he had any means of acquiring a knowledge of the truth, neither he nor his representative can invoke the aid of estoppel. 23 W.R. 747; 36 W.R. 456; 77 R.R. 715, Rel. The foundation of estoppel arising out of an execution sale, must be laid on a representation made before and not after the sale. Consequently to support a plea of estoppel it is not enough to produce merely the sale certificate but it is necessary to produce the sale proclamation also. (*Mookerjee and Beachcroft*, JJ.) PROSANNA KUMAR MUKHERJEE *v.* SRIKANTHA RANT. **40 Cal. 173 = 17 C W.N. 137 = 16 I.C. 365 = 16 C L.J. 202.**

[Also 12 I C. 558 = 37 Mad. 38; Also 9 I.C. 662 = 15 C.W.N. 572.]

———S. 115—*None if truth known—Name inserted as arbitrator fraudulently in submission to arbitration—Party with knowledge keeping silent if can afterwards object.*

Where the parties to a submission to an arbitrator did not object when they came to know that a name was fraudulently entered in the submission as an arbitrator they are estopped from afterwards impeaching the award. 5 W.R, P.C. 21, Rel. on. (*Mookerjee and Carnduff*, JJ.) MANINDRA NATH *v.* MOHUNANDA ROY. **18 I.C. 161 = 15 C.L J. 360.**

———S. 115—*None if truth known.*

No estoppel exists where the facts are known. (*Chitty and Chatterjee*, JJ.) KAMAL KUMAL , KALIMEAH. **6 I,C. 662 = 15 C.W.N. 572.**

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

——S. 115—*None if truth known—Admission by opposite party.*

If a party is fully aware of his position, an admission of the opposite party which does not in any way influence the beliefs or actions of the former does not operate as estoppel against the party making the admission. (*Leslie Jones and Broadway*, JJ.) MEHRA *v.* DEVI DITTA MAL. **2 Lah. 88=62 I.C. 665=3 Lah. L.J. 223.**

——S. 115—*None if truth known—Dealing with an agent after principal's death.*

Where a person enters into a contract with an agent after the principal's death, with the knowledge of the facts, cannot challenge it subsequently on the ground of want of authority. (*Broadway and Abdul Raoof*, JJ.) MUSAJI AHMED & CO. *v.* ADMINISTRATOR-GENERAL, BENGAL. **60 I.C. 739.**

——S. 115—*None if truth known—Both parties aware of facts and laws.*

Where both parties are equally aware of the facts or law with regard to a particular question the principle of estoppel does not apply. 7 M. 3=20 C. 296, Dist. (*Johnstone and Rattigan*, JJ.) TEK CHAND *v.* GOPAL DEVI. **46 P.R. 1912=127 P.L.R. 1912=13 I.C. 481=180 P.W.R. 1912**

——S. 115—*None where truth is known to both parties.*

A person who knows the truth can hardly be allowed to rely upon an estoppel arising from a false representation. No estoppel can arise where the truth is known to the party who claims the estoppel. 30 I.A. 114, Foll. (*Krishnan and Ramasam*, JJ.) VENKATACHALA PILLAI *v.* ARUNTHAVATHACHI. **(1923) M.W.N. 225=17 L.W. 755=1923 Mad. 868.**

——S. 115—*None if truth known.*

There can be no estoppel where both parties know the full facts. (*Ayling and Odgers*, JJ.) RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. **(1922) M.W.N. 481=1923 Mad. 11.**

——S. 115—*None if truth known.*

Estoppel applies only when a man should be prevented from denying the truth of some matter which he has caused another to believe to be true. Where it was agreed between the parties that the claim petition of the defendant should be allowed but without costs and that plaintiff should apparently in consideration of the first defendant giving up his costs refrain from instituting a suit. *Held*, that S. 115 of the Evidence Act did not apply and there was no estoppel. Whether such an agreement would be void on the principle contained in S. 28 of the Contract Act. (*Ayling and Tyabji*, JJ.) VENKATARAMA AIYAR *v.* NARAYAN AIYAR. **28 I.C. 536=(1915) M.W.N. 237.**

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

——S. 115—*None if truth known.*

Estoppel does not apply when the party who would be benefited by it has known the truth, nor does it apply so as to defeat a plain provision of law. There can be no ratification of a transaction when the promisor was not in a position to contract. A cause of action cannot be founded on an estoppel nor does an estoppel arise from a representation of a mere intention. (*White*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLAICHAMI THEVAN. **37 Mad. 38=21 M.L.J. 1077=10 M.L.T. 385=12 I.C. 568=(1911) 2 M.W.N. 461.**

——S. 115—*None if truth known.*

The rule of estoppel does not hold good where the truth as to the matter stated is known to both parties. Nor can there be an estoppel to defeat the plain provision of the law. (*Brockman*, J.C., *Stanyon and Mitra*, A.J.Cs.) SALU BAI *v.* BAJAT KHAN. **42 I.C. 200=13 N.L.R. 130 (F.B.)**

——S. 115—*None if truth known.*

Where the defts. have full knowledge of the Ikrar and of their own wrong, they cannot raise the plea of estoppel against the plff. (*Lindsay*, J.C.) BHAIYA KANDHAI PRASAD *v.* GAURI SHANKAR. **21 I.C. 256.**

——S. 115—*None if truth known.*

No estoppel can arise where truth is known to both parties. (*Das and Kulwant Sahay*, JJ.) JAGDIP PRASAD SAHI *v.* MT. RAJO KUER. **2 P. 585=4 P.L.T. 531=(1923) Pat. 177=1923 P. 464.**

——S. 115—*None if truth known.*

The plea of estoppel will fail if the person setting up the plea does not prove that he was ignorant of the truth in regard to the representation of the other party. (*Mullick and Atkinson*, JJ.) BANSRAJ LAL *v.* MOTI LAL. **3 P.L.W. 360=42 I.C. 425=(1918) Pat. 21.**

——S. 115—*None if truth known.*

If the party raising the plea of estoppel has not believed the representation made to him, to be true or has known the real facts there will be no estoppel, for the resulting conduct is in no sense the effect of the representation. (*Sharfuddin and Mullick*, JJ.) JAGANNATH PRASAD *v.* JAINKISIN PRASAD. **1 P.L.J. 16=34 I.C. 375=3 P.L.W. 164.**

——S. 115—*None if truth known.*

Estoppel is only a rule of evidence which precludes a person from denying that some statement previously made by him is true or the conventional statement of facts upon the basis of which an agreement has been entered into. (*Fawcett*, A.J.C.) FIRM OF KHUSHIRAM MELKIRAM *v.* FIRM OF MESSRS. RALLI BROTHERS. **49 I.C. 449=12 S.L.R. 78.**

EVIDENCE ACT (I of 1872), S. 115—No exhaustive.

Not Exhaustive.

———Ss. 115 and 116—*Not exhaustive.*

The whole law of estoppel is not contained in Ss. 115 and 116. There may be other rules of estoppel not mentioned in those sections. 5 C. 669; 10 C.W.N. 747, Rel. (*Sanderson*, C.J. *and Mookerjee*, J.) BHAIGANTI *v.* HIMMAT. **20 C.W.N. 1335=35 I.C. 7=24 C.L.J. 103.**

———S. 115—*Not exhaustive—Representation—Feeding the estoppel—Estoppel—Principle applicable to Hindu conveyances before the Evidence Act and T.P. Act.*

The principle of S. 115, Evidence Act and S. 41 of the T.P. Act applies to conveyances executed also before the passing of the Evidence Act and the T.P. Act. (*Chaudhury and Newbould*, JJ.) KRISHNA CHANDRA GHOSE *v.* RASIK LAL KHAN. **21 C.W.N. 218=33 I.C. 568=23 C.L.J. 501.**

Omissions.

———S. 115—*Omission—Silence—Proprietary interest—Wrong entry in settlement.*

Co-sharers can plead in a suit that the entry in the settlement papers was wrong even though 27 years have already elapsed. (*Piggott and Walsh*, JJ.) KALI PRASAD *v.* HARBANS MISER. **50 I.C. 767=17 A.L.J. 588.**

———S. 115—*Omissions—Omission to claim relief—Deliberate omission bars a subsequent suit.*

Where a right of relief is deliberately omitted with full knowledge thereof a suit cannot subsequently be brought for such relief. (*Tudball and Rafique*, JJ.) ABDUL HAKIM KHAN *v.* KARAN SINGH. **37 All. 646=30 I.C. 951=13 A.L.J. 929.**

———S. 115—*Omission — Notice — Reply notice.*

Estoppel cannot be created by the mere neglect to answer a notice. (*Beaman*, J.) DAULAT RAM *v.* NAGENDAS. **19 I.C. 789=15 Bom. L.R. 333.**

———S. 115—*Omission—Duty to speak—Necessary.*

Where there is no duty to speak, silence does not amount to estoppel. (*Mookerjee and Beachcroft*, JJ.) KANDHAN MANDAR *v.* KAMALA PROSAD. **29 I.C. 734=21 C.L.J. 441.**

——S. 115—*Omission to object on partition proceedings—Effect of.*

Deft. claimed a share in partition proceedings on the basis of a gift in their favour. Plaintiff objected to the right of the defendants but was persuaded not to press his objections. He also did not oppose the redemption of a mortgage by defendants as he was not quite certain about his own right of succession. *Held*, that the plaintiff's conduct was insufficient to raise a plea of estoppel against him. (*Leslie Jones and Abdul Raoof*, JJ.) BISHEN SINGH *v.* BULANDA. **4 Lah. L.J. 419.**

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——S. 115—*Omission to object—Party brought on record not objected to.*

Where on the plff.'s death certain persons are brought on record as his legal representatives and the deft. raises no objection thereto, he cannot afterwards contend that they are not his legal representatives. (*Martineau*, J.) TEJ BHAN *v.* WALI DAD. **60 I.C. 716=3 Lah. L.J. 181.**

———S. 115—*Omission—Mortgage—Not impugned in prior proceedings.*

Failure in a previous proceeding, on the part of a defendant in that proceeding, to prove the unreal nature of a mortgage, though the mortgage-deed had been put in and he had been given an opportunity to do so, would estop him from impugning the mortgage in a subsequent suit. (*Krishnaswami Aiyar and Ayling*, JJ.) SULAIMAN *v.* PATTUNA BIVI **9 I.C. 136=9 M.L.T. 294.**

——S. 115—*Omission—Agreement between co-mortgagors to pay off prior mortgage—Failure to inform.*

Where two persons agree to pay off a prior mortgage and take a first charge on the property, it is the legal duty of each to inform his co-mortgagee within a reasonable time that he had still an outstanding claim under the prior mortgage. Otherwise he would be estopped from afterwards maintaining such claim. (*Mitra*, A.J.C.) PANDURANG SHANJI *v.* NARAYAN RAO. **44 I.C. 547.**

——S. 115—*Omission—Puisne mortgagee bidding unsuccessfully at Court-sale on decree on prior mortgagee—Puisne mortgagee not disclosing his mortgage.*

No estoppel prevents a puisne mortgagee not a party to a suit by the prior mortgagee from claiming his remedies, merely because he bid unsuccessfully for the property at the Court-sale in execution of the mortgage decree without disclosing his own mortgage. 4 A.L.J. 709, Dist. (*Batten*, A.J.C.) FULMAL *v.* MUSAMMAT PAPABI **21 I.C. 608=9 N.L.R. 160.**

———S. 115—*Omission—Mutation proceedings—Persons not parties thereto.*

A mutation proceeding cannot estop persons not parties to it unless it can be proved they acquiesced in such proceeding. (*Lindsay*, J.C.) KANDHAIYA BUX SINGH *v.* SHED BUX SINGH **20 I.C. 861.**

Parties and Privies.

——S. 115—*Parties and privies—Transferee from person prejudicing.*

The plea of estoppel can be set up for the benefit of the person who has been induced to change his position and also for that of a transferee from him. So also estoppel works not only against the person making the representation but also against all persons claiming under him by gratuitous title. The doctrine of estoppel is based upon the

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change of position brought about by the representation or actings of the person bound by estoppel. Estoppel applies not only in favour of the person induced to change his or her position, but of a transferee from such person and it binds not only the person whose representations or actings have created it, but all claiming under him by gratuitous title. (*Lord Dunedin*). JAGANNATH PRASAD SINGH *v.* SYED ABDULLAH. **45 Cal. 909 = 16 A.L.J. 576 = 35 M.L.J. 46 = 24 M.L.T. 62 = 20 Bom. L.R. 851 = 28 C.L.J. 192 = 22 C.W.N. 891 = (1918) M.W.N. 406 = 8 L.W. 163 = 5 Pat. L.W. 85 = 45 I.C. 770 = 45 I.A. 97 (P.C.).**

——S. 115—*Parties and privies—Mortgagor and mortgagee—Puisne mortgagee.*

Where a son mortgaged his share of the joint family property to a person and after his father's death mortgaged the same to another: *Held*, that the second mortgagee, a representative in interest of the mortgagor, could not challenge the validity of the first mortgage. 30 A. 38, Dist; 16 I.C. 929, Rel.; 35 C. 877, Ref. (*Ryves and Piggott*, JJ.) TOTA RAM *v.* HAR GOBIND. **36 All. 141 = 21 I.C. 721 = 12 A.L.J. 123.**

——S. 115—*Parties and privies—Different capacity.*

Persons as representatives of the mortgagor cannot dispute the mortgagee's right; but as *mutawalis*, they can plead that the property being *wakf* the mortgage was void. (*Knox and Karamat Hussain*, JJ.) NANDAN SINGH *v.* JUMMAN. **34 All. 610 = 17 I.C. 632 = 10 A.L.J. 278.**

——S. 115—*Parties and representatives—Purchaser at execution sale affected by the same rule of estoppel as judgment-debtor.*

Purchaser at execution sale is affected by the same rule of estoppel as judgment-debtor himself. (*Chatterjee and Cuming*, JJ.) AUMODA MOHAN ROY CHOWDHURY *v.* NILPHAMARI LOAN OFFICE, LTD. **65 I.C. 215 = 26 C.W.N. 436.**

——S. 115—*Parties and privies—Auction-purchaser bound by estoppel.*

An estoppel that would have bound a mortgagor, *i.e.*, a mortgage on the property, is binding upon a mortgagee by whom the property is purchased at a sale in execution of his decree on his mortgage. (*Mookerjee and Panton*, JJ.) KALIDAS *v.* PRASANNA KUMAR. **47 Cal. 446 = 30 C.L.J. 496 = 55 I.C. 189 = 24 C.W.N. 269.**

[But see 53 I.C. 579 = 37 M.L.J. 452.]

——S. 115—*Parties and privies—Hindu reversioner—Consent to alienation by widow.*

A Hindu reversioner does not claim through his father but directly through the last male owner and the consent of his father to an alienation by the widow does not estop him (the son) from disputing the alienation. Nor does the fact of his taking a gift of the property alienated, estop him from suing for possession. (*Mookerjee and Panton*, JJ.) RAMESHCHANDRA CHAKRABARTI *v.* SASHI BHUSAN UPPADHAY. **30 C.L.J. 56 = 53 I.C. 654 = 23 C.W.N. 1025.**

——S. 115—*Parties and privies—Hindu reversioner — Relinquishment by — Taking advantage from widow—Heirs estopped from disputing validity of transaction.*

Where a Hindu reversioner relinquished his rights to a portion of the inheritance in favour of the widow receiving a relinquishment from the widow of all her interest in the remaining portion of the inheritance neither the reversioner nor any person claiming through him, could plead that the relinquishment was not binding on him and had no effect on the portion of the inheritance relinquished in the widow's favour. (*Fletcher and Huda*, JJ.) JOGENDRA NATH BHUNYA *v.* MOHINDRA CHOSA. **47 I.C. 978.**

——S. 115—*Parties and privies—Vendor and vendee—Vendee estopped if vendors waive their right to object to sale.*

The purchaser of a non-transferable occupancy holding will be precluded from setting up non-saleability if the properties of the estate had the opportunity to object in execution. (*Chatterjee and Beachcroft*, JJ.) RAMU PAL *v.* PRAKASH CHANDRA. **32 I.C. 757.**

——S. 115—*Parties and privies—Execution purchaser— Estoppel affecting judgment-debtor.*

A purchaser at an execution sale is not entitled to raise the question of transferability of the holding and is subject to the same estoppels as the judgment-debtor. 22 C. 909; 10 C.L.J. 150; 20 C.L.J. 52, Rel. (*Mookerjee and Beachcroft*, JJ.) KANCHAN MANDAR *v.* KAMALA PROSAD. **29 I.C. 734 = 21 C.L.J. 441.**

——S. 115—*Parties and privies—Auction-purchaser—Execution sale.*

A purchaser at a sale in execution steps into the judgment-debtor's shoes whose right, title and the interests he acquired and is also subject to the same estoppel as he. (*Mookerjee and Beacheroft*, JJ.) PRODYAT KUMAR TAGORA *v.* ISRI RAM MARWARI. **16 I.C. 792.**

——S. 115—*Parties and privies—Auction-purchaser at execution sale.*

The defendants who were the representatives in interest of the tenant and were bound by the same estoppel as the judgment-debtor whose right, title and interest had been purchased by them could not have the question of the transferability of the holding raised at

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their instance. 11 C.L.J. 20; 10 I. C. 49, Rel. upon; 35 C. 904; 10 I.C. 928, Dist. (*Mookerjee and Carnduff, JJ.*) TULSI SINGH *v.* DAYAL SINGH. **15 I.C. 718.**

———S. 115—*Parties and privies—Strangers not affected.*

The plaintiff purchased from an occupancy raiyat the holding in dispute though the landlord's consent was essential for the validity of its transfer. Subsequently the defendant purchased the same holding in execution of a decree for rent obtained by some of the co-sharer landlords. The plaintiff sued for declaration of title and recovery of possession. *Held*, that the plaintiff got no title to the holding as it was not transferable, that there could not be estoppel against the defendants under S. 115 for they were no party to the transaction under which the plaintiff claimed title, and the suit must fail. (*Ghose and Pargiter*, JJ.) ACHAMULLA SIRCAR *v.* CHOLLAMUNNESSA BIBI. **10 I.C. 928=13 C.L.J. 479.**

———S. 115—*Parties and privies—Auction-purchaser—Transferability of holding.*

It is not open to the auction-purchaser of a non-transferable holding to raise the question of its transferability because he is only a representative of the judgment-debtor and the tenants themselves could not have raised the question. (*Woodroffe and Carnduff*, JJ.) KAILASH CHANDRA *v.* AKHOY NARAIN SOW. **10 I.C. 880.**

———S. 115—*Parties and privies—Rival claimants from same party—Occupancy holding—Mortgage of.*

As between the mortgagee purchaser of the interest of a tenant of a non-transferable holding and a private purchaser from the same person, the question of the transferability of the holding does not arise. (*Mookerjee and Teunon*, JJ.) SHYAMA CHARAN BHATTACHARYA *v.* MOKHODA SUNDARI DEBI **15 C.W.N. 703=10 I.C. 49=13 C.L.J. 481.**

———S. 115—*Parties and privies—Judgment-debtor—Execution purchaser.*

Where a Court in execution of a decree purports to sell property outside its territorial jurisdiction a subsequent purchaser in execution of a decree against the same judgment-debtor can question the validity of the former sale although the judgment-debtor himself might be estopped from questioning the validity of the sale. 35 Cal. 877; 7 Cal. L.J. 644 Not Foll.; 22 Cal. 909, Expl. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VEERAPPA CHETTI *v.* RAMASWAMI CHETTI. **23 Mad. 135=37 M.L.J. 412=26 M.L.T. 271=33 I.C. 579=11 L.W. 232.**

———S. 115—*Parties and privies—Auction-purchaser—Decree-holder's right to sale enures for the benefit of auction-purchaser.*

When an auction sale cannot be questioned by the judgment-debtor or one claiming under him as against the decree-holder on the ground of estoppel it cannot be questioned as against the auction-purchaser also, as the decree-holder's right to sale enures for the benefit of the auction-purchaser. 20 . 296, Appl.; 18 M. 13, Foll. (*Spencer and Phillips*, JJ.) SWAMINATHA VELLALA *v.* DRMALINGA CHETTIAR. **37 I.C. 823=(1917) M.W.N. 88.**

EVIDENCE ACT (I of 1872), S. 115—Part-performance.

———S. 115—*Parties and privies—Liability of—Intermediate arrangement between original parties.*

Estoppel can be raised as a plea by parties as well as their privies. The privy cannot be deprived of such benefit by the fact that since the time the representation was made and the privity of the estate commenced, the person to whom the representation was made and the person who made the representation have come to an arrangement contrary to the representation. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) BADRI BISHAL *v.* BAIJ NATH. **47 I.C. 934=5 O.L.J. 458.**

———S. 163—*Parties and privies—Subsequent mortgagee—Representations of mortgagor.*

A subsequent mortgagee is bound by the representations made by the mortgagor to a prior mortgagee and cannot challenge the validity of the prior mortgage so far as it affects the share which was subsequently mortgaged. (*Stuart and Kanhaiya Lal*, A.J.Cs.) GURDAYAL *v.* TAID HUSSAIN. **6 O.L.J. 31=54 I.C. 766=2 U.P.L.R. (H.C.) 34.**

Part-performance.

———S. 115—*Part-performance — Contract to settle property in consideration of doner coming and living with donor—Actings of the parties—No* locus penitentiae.

A very rich widowed aunt wanted her niece and her husband to come and live with her. To this the niece agreed but on condition that the aunt settled a village on her. Subsequently the aunt wrote to the niece and to her husband assuring them that a village had been purchased only with a view to be given to the niece and that it would be duly given to her after the death of the writer. The niece and her husband thereupon came and lived with the aunt for seven years till her death. The niece claimed the village as hers, though there was no written and registered conveyance in writing in her favour, as required by law. *Held*, that having regard to the actions of the parties, neither the aunt nor her legal representatives could resile from the contract which was specifically enforceable by the niece. The niece was accordingly held entitled to the possession of the village. The conduct of the parties and their actings had supplied whatever defects there might have been from a conveyancing point of view and the parties were estopped from going

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behind the contract. (*Lord Shaw.*) LAKSHMI VENKAYYAMMA *v.* VENKATANARASIMHA.
39 Mad. 509=20 C.W.N. 1054=
14 A.L.J. 797=31 M.L.J. 58=
(1916) 2 M.W.N. 23=20 M.L.T. 137=
4 L.W. 58=18 Bom. L.R. 631=
34 I.C. 921=24 C.L.J. 279 (P.C.).
Also 28 I.C. 980=42 Cal. 801 (P.C.)=
But *See* 48 I.C. 138=40 Mad. 1134.
[On apeal from 32 I.C. 65.]

——— S. 115—*Part performance—Contract not embodied in statutory form—Actings of the parties — Parties not allowed to reside from contract—No* locus penitentiæ.

Locus penitentiæ, i.e., the power of resiling from an incomplete engagement, from an unaccepted offer, from a mutual contract to which all have not assented, from an obligation to which writing is requisite and has not yet been exhibited in an authentic shape, exist so long as the engagement is not complete or final. But where the actings and conduct of the parties are founded upon, *rei inter ventus* raises a personal exception which excludes the plea of *locus penitentiæ*. It is inferred from any proceedings, not unimportant, on the part of the obligee, known to and permitted by the obligor to take place on the faith of the contract, as if it were perfect; provided they are unequivocably referable to the contract and productive of alteration of circumstances, loss or inconvenience, though not irretrievable. (*Lord Shah.*) MAHOMED MUSA *v.* AGHORE KUMAR.
42 Cal. 801=42 I.A. 1=
17 Bom. L.R. 420=21 C.L.J. 231=
28 M.L.J. 518=19 C.W.N. 280=
13 A.L.J. 229=17 M.L.T. 143=2 L.W. 268=
28 I.C. 980=(1915) M.W.N. 621 (P.C.).

———S. 115—*Part performance — Conduct of parties subsequent to a deed.*

The conduct of the parties after a deed has been executed, may operate as an estoppel, if it amounts to a part-performance of the contract. (*Johnstone and Chevis*, JJ.) BULAKHI MAL *v.* O.J. FLOYAD.
27 P.R. 1911=
118 P.W.R. 1911=10 I.C. 1005=
191 P.L.R. 1911.

———S. 115—*Part-performance — Unregistered exchange—Actings of parties.*

Plaintiff and defendant exchanged adjacent lands worth more than Rs. 100 each by an unregistered deed both in good faith believing they had effected a valid transfer. Each took possession and the defendant built considerable structures on the property exchanged. Plaintiff was aware of the progress of the building and even took an additional sum of money for the excess area found to have been given in exchange. In a suit by the plaintiff to eject the defendant: *Held*, by the majority that the plaintiff was not estopped and that he was entitled to recover his plot owing to the absence of a registered conveyance as required by Ss. 54 and 118 of the T.P. Act. Per *Abdur Rahim*, J.—Plaintiff was estopped by his conduct from recovering the plot in spite of the absence of a formal conveyance. (*Abdur Rahim, Sadasiva Aiyar and Napier*, JJ.) RAMANATHA CHETTY *v.* RANGANATHAN CHETTY.
40 Mad. 1134=
6 L.W. 300=22 M.L.T. 173=
33 M.L.J. 252=43 I.C. 138=
(1917) M.W.N. 757 (F.B.).

EVIDENCE ACT (I of 1872), S. 115—Pleadings.

———S. 115—*Part-performance—Incomplete engagement—Power to resile.*

Though a party has complete power to resile from an incomplete engagement, such a power will be denied when the actings and conduct of the parties have carried the incompletely executed engagement into effect. The doctrine of part-performance does not apply to a case where a Hindu widow even though purporting to relinquish her estate remains in possession thereof. (*Das and Kulwant Sahay*, JJ.) RAO BAHADUR MAM SINGH *v.* MAHARANI NAWALAKHBATI.
2 Pat. 607=4 Pat L.T. 335=
1923 P. 492.

Pleadings.

———S. 115—*Pleading—Nature of—Scope of the doctrine.*

Very often the term 'estoppel' is used with reference to transactions to which it has no proper application. In its essence it means that the party estopped has by his words or conduct prevented himself from asserting the true facts on which he would otherwise have been entitled to rely. (*Lord Buckmaster.*) SIVA PRASAD SINGH *v.* TATA IRON AND STEEL COY., LTD.
46 Cal 852=45 I.A. 275=
(1919) M.W.N. 278=52 I.C. 909=
23 C.W.N. 456 (P.C.)

———S. 115—*Pleading—Nature of plea.*

Estoppel and *res judicata* are not the same. A true *res judicata* ousts the jurisdiction of the Court, while estoppel shuts the mouth of the party. Estoppel means that a person shall not be allowed to say one thing at one time and the opposite at another; while *res judicata* means that the person shall not say the same thing twice over. (*Beaman*, J.) BHAISHANKAR *v.* MORAN.
36 Bom. 383=12 I.C. 515=
13 Bom. L.R. 950

———S. 115—*Pleading—Plea of to be proved by production of the pleadings.*

If a plaintiff wants to show that defendants are estopped from raising a certain plea by reason of their pleadings in a previous suit between the parties mere production of a copy of the Court's judgment in the previous suit containing a summary of the pleadings in that suit is not enough but the written statement filed by the defts. in that suit should be produced. (*Walmsley and Panton*, JJ.) ANNADA PRASANNA LAHIRI *v.* BABULLA MANDAL.
37 I.C. 985.

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——S. 115—*Pleading—Onus of proving.*

The burden of proof when estoppel is set up is on the party who sets up the plea. (*Fletcher and Smither*, JJ.) BIRENDRA KISHORE *v.* BAIKUNTA CHANDRA. **46 I.C. 474.**

——S. 115—*Pleadings—Unnecessary pleas raised and decided—No estoppel.*

A plea unnecessarily raised by a party and decided by the Court also equally unnecessarily does not estop the party from putting the same in a later suit. (*Campbell*, J.) SOHAN SINGH *v.* JAWALA SINGH. **1923 Lah. 248.**

——S. 115—*Pleading—Proof.*

Precise facts which caused him to believe that his transferor was the real owner must be pleaded by a person invoking the plea of estoppel and he must also show the precise nature of the enquiries relied on by him. (*Shadi Lal*, J.) RAM SARUP *v.* MAYA SHANKAR. **46 P.R. 1918 = 45 P.L.R. 1918 = 43 I.C. 556 = 33 P.W.R. 1918.**

——S. 115—*Pleadings.*

Estoppel under S. 115 is a rule of pleading based on the principle that where a man has by representing certain things to be true caused another to alter his position, he cannot turn round and say that he is not bound by the representation. (*Abdur Rahim and Moore*, JJ.) SHANMUGHAVELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. **(1920) M.W.N. 679.**

——S. 115—*Pleading—Plea to be raised at ths trial.*

A question of estoppel can only be raised by pleading, and if the Court is to be asked to go into the matter it is essential to place before the Court facts which would enable it to come to a conclusion as to whether or not the principle of estoppel applies to the suit. (*Das*, J.) PURGAN PANDE *v.* DHANPAT TEWARI. **52 I.C. 739.**

——S. 115—*Pleading — Elements necessary.*

To establish estoppel the defendant must show that the plaintiff made a representation which was acted upon by the deft. whose position was consequently changed. (*Mullick*, J.) BASIRUL HUQ *v.* MUHAMMAD AJIUDDIN. **43 I.C. 857 = 3 P.L.W. 213.**

Public Policy.

——S. 115—*Public policy—Defeating of—No estoppel.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition based on the ground of public policy. (*Ayling and Coutts-Trotter*, JJ.) KANDAIYA PILLAI *v.* CHOKKOMMAL. **28 M.L.T. 105 = 59 I.C. 214 = 12 L.W. 7.**

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——S. 115—*Public policy—Stifling criminal prosecution—Money received.*

The defendant in a suit for refund of money paid to stifle a prosecution is not estopped from showing that the money he seeks to retain was really due to him, if such plea has been specifically put forth by him. 28 I.C. 134, 9 B. and C. 902, (1903) A.C. 49 Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) MUTHUVEERAPPA CHETTI *v.* RAMASWAMI CHETTI. **40 Mad. 285 = 34 I.C. 401 = 31 M.L.J. 264.**

——S. 115—*Public policy—Estoppel.*

A transfer contrary to public policy cannot be legalised by estoppel. (*Sharfuddin and Roe*, JJ.) PUNCHA *v.* BUNDESWARI. **37 I.C. 960.**

Representation.

——S. 115—*Representation—Necessity for—Suit in ejectment by landlord against tenant.*

The proprietors of certain lands sued to eject a tenant D but the suit was dismissed on appeal by the High Court on the ground that D was a raiyat and that no valid notice to quit had been given to him. Pending an appeal to the Privy Council D's legal representatives sold the holding to defts. The plff's. did not admit the validity of the sale but the defts. were brought on record before the Privy Council and the appeal was eventually dismissed. In a subsequent suit to eject defts. *Held*, that the plffs. were not estopped from suing in ejectment inasmuch as there was no representation on their part of the existence of any occupancy right in D. (*Sir John Edge.*) DAMODAR NARAYAN CHOWDHURY *v.* MILLER. **16 L.W. 692 = 4 U.P.L.R. (P.C.) 108 = 31 M.L.T. 205 = 27 C.W.N. 461 = 21 A.L.J. 365 = 44 M.L.J. 72 = 4 P.L.T. 99 = 1922 P.C. 349 (P.C.).**

——S. 115—*Representation— Change of position.*

A change in the position by representations of a person is the basis of the doctrine of estoppel. Not only the persons making the representations but all holding under them gratuitously are bound by the estoppel. Upon the sale by auction in an estate it was purchased benami on behalf of the Zemindar of the estate, but no transfer to the benamidar was made. The benamidar, upon the instruction of the Zamindar, purported to transfer the village by a deed of sale to the Zemindar's illegitimate daughter, by whom however, no consideration was paid. The Zemindar by petition supported an application by the daughter for mutation of names, whereupon she became the registered proprietrix. *Held*, that the Zemindar and those claiming under him by gratuitous title were estopped from denying the title of the grantee because as a result of the Zemindar's acts her position had been changed in that she became liable for the revenue assessed upon the

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village. (*Lord Dunedin.*) JAGANNATH PRASHAD SINGH *v.* ABDULLAH.
45 Cal. 909=45 I.A. 97=16 A.L.J. 876=5 Pat. L.W. 83=(1918) M.W.N. 406=22 C.W.N. 891=8 L.W. 163=24 M.L.T. 62=28 C.L.J. 192=20 Bom. L.R. 851=45 I.C. 770=35 M.L.J. 46 (P.C.).

——S. 115—*Representation—Negligence—Collector—Defective performance of statutory duty—Estoppel against Government—Bombay City Land Revenue Act (II of 1876) Tenure of land.*

The object of Bombay Act II of 1876 is to provide for the administration and collection of the land revenue of the Government in the City of Bombay and not to establish a system of registration of titles. The revenue register might be of use for conveyancing purposes. But neither the language of the statute nor the character of the officials who have the duty of keeping it, is such as to indicate an invitation to the public to rely on the incidental statements as to titles made in the records but which do not purport to be decisive either of the rights of the Government or those of the individuals as to anything except the liability to contribute to the revenue. A certificate of the Collector, under the provisions of the above Act, certifying an extract from the rent rolls kept in the office by which extract certain land was incorrectly described as being classified under the head 'Rent roll or quit or ground rent' does not estop the Government from resuming the land as being held under the *sanadi* tenure. (*Viscount Haldane*) MERWANI MUNCHERJI CAMA *v.* SECRETARY OF STATE. **39 Bom 661=19 C.W.N. 1036=(1915) M.W.N. 536=2 L.W. 701=29 M.L.J. 299=13 A.L.J. 1026=30 I.C. 539=42 I.A. 185 (P.C.).**

——S. 115—*Representation — Change of position — Prejudice to adoptee — Subsequent denial of adoption.*

A plff. who has asserted over and over again the factum of an alleged adoption, who has consented to be bound by it, who has on his own showing received valuable consideration in return for making such assertions and who has by reason of the setting up of the alleged adoption caused the deft. to be deprived of all share in landed property of his natural father is estopped from asserting that the adoption never in fact took place. (*Rafique and Piggott*, JJ.) UDIT NARAIN *v.* RANDHIR SINGH.
20 A.L.J. 915=45 A. 169=1923 All. 58.

——S. 115—*Representation—Joint family—Alienation—Effect of.*

An alienation by one co-parcener is not altogether void but is voidable at the option of other co-parceners. It cannot be challenged by the executant. 31 All. 11, Foll; 34 A. 155,

EVIDENCE ACT (I of 1872), S. 115—Representation.

Diss. (*Chamier*, J.) BISHUMBHAR DAYAL *v.* PAROHADILAL. **16 I.C. 629=10 A.L.J. 112.**

——S. 115—*Representation—Common mistake.*

Estoppel cannot be established by the mere fact of sharing erroneous belief with others. (*Macleod and Heaton*, JJ.) GIRIJABAI *v.* SADASIVA VISHVANATH. **38 I.C. 394=22 Bom. L.R. 974.**

——S. 115—*Representation—Holding out a person as ostensible owner.*

Where a true owner of property holds out another as the ostensible owner and the property is sold by the latter to a *bona fide* purchaser for value, the true owner will be estopped from setting up his rights as against such *bona fide* purchaser. (*Beaman*, J.) TEHILRAM *v.* LONGIN D'MELLO. **37 I.C. 231=18 Bom. L.R. 587.**

——S. 115—*Representation of fact—Misrepresentation—Contract executed under—Effect on heirs.*

Misrepresentation *per se* as a ground of relief must be one of fact and not of future intention. So in cases of misrepresentation of fact, the relation of the parties in law would have to be determined on the assumption that the fact was as it was represented to be. Thus where a marriage was brought about by a misrepresentation of a person that the bridegroom was his adopted son, the former is bound to make good the misrepresentation and so the adopted will be entitled to succeed as heir after his death in preference to his widow. (*Beaman*, J.) LADKABAI *v.* NAVIVAHU. **31 I.C. 708=17 Bom. L.R. 783.**

——S. 115—*Representation—Negligence.*

(*Scott*, C.J.)—An action cannot be founded on estoppel, as it is merely a rule of evidence, but it is important to prevent the defendant from denying the truth of what has been asserted by him. A person cannot take advantage of a representation alleged to create estoppel unless he is concerned in the transaction in which the representation was made. (*Russel*, J.) There can be no estoppel when the whole record or deed in which the statement relied upon is contained shows the truth. There is no estoppel when the circumstances were likely to have prevented a reasonable man from acting on the statement. (*Scott*, C.J. *and Russel*, J.) MEVANJI *v.* SECRETARY OF STATE. **16 I.C. 714=14 Bom. L.R. 654.**

——S. 115—*Representation—Fact and law—Nature of estoppel by conduct.*

Estoppel is a substantial plea which must be set up and proved by unambiguous evidence by the party wishing to take advantage of it. 20 C. 296, Expl. and Dist. The doctrine of

EVIDENCE ACT (I of 1872), S. 115—Representation.

estoppel by representation applies only to representation as to certain facts alleged at the time to be actually in existence, and not to promises in future which if they bind at all, bind as contracts. *Maddison* v. *Alderson*, 8 App. Cas. 467, Rel. To create an estoppel by conduct under S. 115 of the Evidence Act intentional conduct on the part of one party causing the other party to believe and act on the belief that a certain thing was true in fact and not merely true in law must be proved. Ignorance of law cannot be pleaded by either party. (*Chandavarkar and Batchelor*, JJ.) BAI KASHI *v.* JAMNADAS. **16 I.C. 133 = 14 Bom. L.R. 547.**

——S. 115 — *Representation — Person claiming title under another — Knowledge.*

Where A and B convey property to C making him believe that they are sole owners of the property and C acting on that representation takes the property for consideration, A and B are estopped from asserting the title of a third person to the property even though C has transferred the property to D who was aware of the title of that third person. (*Greaves and Ghose*, JJ). SARADA PROSAD BANERJEE *v.* GOSTO BEHARI HAZRA. **36 C.L.J. 78 = 1923 Cal. 542.**

——S. 115—*Representation—Hindu reversioner—Joining in mortgage by widow—Reversioners if can subsequently sue.*

Some of the sons of a Hindu widow who had only a limited interest in the property joined in the mortgage executed by her and thus represented that the property was being mortgaged by their mother for legal necessity. *Held*, that the sons could not go back upon those representations when dealing with a party who had changed his position relying on the representations of fact and were as such estopped from denying the validity of the mortgage to which they were parties. A reversioner who had voluntarily signed the deed executed by a widow cannot legally claim in opposition thereto. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) SHIB CHANDRA KAR *v.* DULCKEN. **43 I.C. 78 = 28 C.L.J. 123.**

——S. 115—*Representation—Plea of, to be specifically raised.*

Estoppel by representation only arises where the representation is as to a matter of fact. Estoppel cannot be relied upon unless it is pleaded. (*Mookerjee and Beachcroft*, JJ.) CHANDI CHARAN NATH *v.* SOMLA BIBI. **22 C.W.N. 179 = 44 I.C. 284 = 28 C.L.J. 91.**

——S. 115—*Representation—Feeding the estoppel—Subsequent acquisition of interest.*

Where a grantor declares himself to be in possession of a specific estate and the Court finds that it was assumed by the parties that such estate was to pass and that they had acted on such assumption, an estate by estoppel is created between the parties and those claiming under them in respect of any after-acquired interest in the *grantor*. (10 C.L.R. 61 and 6 C.L.R. 528, Dist.) (*Chaudhury and Newbould*, JJ.) KRISHNA CHANDRA GHOSE *v.* RASIK LAL KHAN. **21 C.W.N. 218 = 33 I.C. 568 = 23 C.L.J. 501.**

——S. 115—*Representation—Recitals.*

It is not open to the grantor of a lease to show that the recitals in the document as to his status are incorrect and that on the true facts, he had no right to create a lease. But a purchaser of the leased land at a sale on decree for arrears of rent is not bound by this estoppel. (*Mookerjee and Roe*, JJ.) JANAKI NATH HORE *v.* PRABHASINI DASI. **43 Cal. 178 = 30 I.C. 838 = 22 C.L.J. 99 = 19 C.W.N. 1077.**

——S. 115 — *Representation — Recitals—Effect.*

An estoppel is not created by a collateral statement not concerning the direct purpose of a deed. (*Mookerjee and Teunon*, JJ.) BEPIN BEHARI MITTER *v.* TINKOWARI PATHAK. **13 C.L.J. 271 = 9 I.C. 374 = 15 C.W.N. 976.**

——S. 115—*Representation—Mortgagee—Sale of property—Claim against vendee.*

Where a mortgagee on inquiry by a vendee gives him the exact amount due on his mortgage and this information is acted upon by the latter who retains that amount out of the purchase-money for paying off the mortgage, the mortgagee is estopped from recovering any larger amount from the vendee. (*Scott-Smith and Leslie-Jones*, JJ.) SECRETARY, CHIEF KHALSA DEWAN AMRITSAR *v.* PUNJAB NATIONAL BANK, LTD. **55 I.C. 492 = 141 P.R. 1919.**

——S. 115—*Representation — Change of position—Necessity for.*

Three factors are necessary to bring a case within S. 115 of the Evidence Act (1) a representation which amounts to an intention of causing or permitting to cause belief in another; (2) belief on the part of that other and (3) an action arising out of that belief. (*Scott-Smith*, J.) HARLAL *v.* BASAN SINGH. **75 P.L.R. 1918 = 47 I.C. 98 = 75 P.W.R. 1918.**

——S. 115—*Representation— Omission—Mortgage.*

Where the mortgagee erroneously agreed to and did strike off a certain clause from a mortgagee-deed but afterwards took action upon the deleted clause it is open to the mortgagor to treat the action as a nullity since he acted upon the belief that the deletion was right. (*Scott-Smith and Shadi Lal*, JJ.) SALIG RAM *v.* CHAJJU. **118 P.W.R. 1917 = 41 I.C. 212 = 46 P.R. 1917.**

EVIDENCE ACT (I of 1872), S 115—Representation.

———S. 115—*Representation — Pre-emptor induced to treat sale as a whole—Effect.*

Persons, who, by clothing their transaction in a particular form induce the pre-emptor to claim pre-emption in respect of it as a whole cannot be allowed to turn round and claim to show that the intention expressed in the sale-deed was not their real intention. (*Rattigan and Scott-Smith*, JJ.) MAGHI *v.* NARAIN. 6 P.R. 1914=256 P.L.R. 1913=20 I.C. 31=163 P.W.R. 1913.

———S. 115—*Representation—Matter of law—Opinion as to legal effect of adoption.*

A mere view or opinion as to the legal effect of an adoption is not a thing within the meaning of S. 115 of the Act, and so estoppel can be created only by a representation which is the cause of the belief and which is acted upon. (*Johnstone and Rattigan*, JJ.) TEK CHAND *v.* GOPAL DEVI. 46 P.R. 1912=127 P.L.R. 1912=13 I.C. 482=180 P.W.R. 1912.

———S. 115—*Representation—Adoption.*

Representation on a matter of law, *i.e.*, as to the validity of an adoption creates no estoppel. (*Ayling and Odgers*, JJ.) RAJAMBAL AMMA *v.* SHANMUGA MUDALIAR. (1922) M.W.N. 481=1923 Mad. 11.

———S. 115—*Representation—Ostensible owner—Purchaser from—Enquiry.*

A purchaser from an ostensible owner of property must prove that he had no notice actual or constructive of the real owner's title, before the latter can be resisted on the ground of estoppel. (*Ayling and Coutts Trotter*, JJ.) VENKATARAMA AIYAR *v.* E VENKATARAMA AIYAR. 9 L.W. 818=50 I.C. 969=(1919) M.W.N. 180.

———S. 115—*Representation—Existing fact—Relinquishment of rights of inheritance—By a Mahomedan.*

Per *Sadasiva Aiyar*, J. (contra *Spencer*, J.) The effect of S. 115 is not to prevent a person from denying the legal effect of a transaction to which he is a party, but only the truth of a 'thing' which he intentionally caused the other party to believe. The 'thing' does not refer to the legal validity of an agreement to relinquish a *spes successionis* when it accrues nor to an intention which has to come into existence in the future, *e.g.*, when a succession opens. The intentional misleading under the section refers to the present existence of a right or fact and not to a future metaphysical possibility. (*Sadasiva Aiyar and Spencer*, JJ.) ASA BEEVI *v.* KARUPPAN CHETTI. 41 I.C. 361.

———S. 115—*Representation—Effect of—Intention.*

Words used by parties are binding on them whatever their intention might be. (*Spencer, Coutts-Trotter and Napier*, JJ.) VENKATA SUBBIAH CHETTY *v.* SUBBA NAIDU. 2 L.W. 977—18 M.L.T. 533—31 I.C. 152—(1915) M.W.N. 822.

EVIDENCE ACT (I of 1872), S. 115—Representation.

———S. 115—*Representation—Conditional promise to remit rent.*

A promise to remit rent complied with conditions is not an absolute promise of remission and the landlord can enforce his rights in full. (*Sadasiva Aiyar and Hannay*, JJ.) SUBBARAYA AIYAR *v.* KOLANDAVELU MUDALI. 26 I.C. 958.

———S. 115—*Representation—Hindu reversioner—Dealings with minor widow.*

Where on the faith of representations by the defendant who was a reversioner, that the widow was a major and competent to carry on her husband's family trade, plaintiff entered into business relations, estoppel will prevent deft. from contending that she was a minor at the time and incompetent to incur debts. And if there is no withdrawal of such representations on the part of the reversioner the mere fact that the defendant was questioning her legal capacity will not prevent the operation of such representation in respect of advances made after that date. (*Sadasiva Aiyar and Napier*, JJ.) THE SOUTH INDIAN EXPORT CO., LTD. *v.* T. SUBBIER. 28 M.L.J. 696=29 I.C. 957.=(1915) M.W.N. 488.

[On appeal from 24 I.C. 398=15 M.L.T 328.]

———S. 115—*Representation—Error of law.*

An estoppel cannot be based on the ground of a mistaken impression of law regarding the validity of an adoption. (*Benson and Sundara Aiyar*, JJ.) AIYANNA CHARIAR *v.* LAKSHMI AMMAL. 21 M.L.J. 500=10 M.L.T. 19=10 I.C. 194=(1911) 2 M.W.N. 62.

———S. 115—*Representation—Mistake—Effect.*

Representation made under a mistake of fact operates as an estoppel. (*Hallifax*, A.J.C.) RAMPRASAD *v.* IMARAT BAI. 18 N.L.R. 27=1922 N. 79.

———S. 115—*Representation—Prejudice—No prejudice to party misled—Effect of.*

In the absence of proof that a representation in a sale-deed has been relied upon by a person who has therefore acted to his prejudice the plea of estoppel is not available to him. The doctrine of estoppel cannot be applied to a witness who is not a party to the suit where the party calling him is not estopped. (*Mitra*, A.J.C.) RAJIB HUSSAIN *v.* ZING RAJI. 54 I.C. 962.

———Ss. 115—*Representation—Law or fact.*

A representation will not generally create estoppel if it is not a material statement of fact but of law, because an admission (on a point of law cannot operate as an estoppel. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRABHAGA. 34 I.C. 675=12 N.L.R. 100.

EVIDENCE ACT (I of 1872), S. 115—Representation.

——S. 115—*Representation—Pre-emption suit.*

In order to maintain a plea of estoppel in a pre-emption suit, it must be proved that the plaintiff believed the representation made and brought his suit on the basis of it. (*Daniels*, A.J.C.) BANKE BEHARI LAL *v.* MANNA LAL.
73 I.C. 372=9 O. & A.L.R. 79.

——S. —*Representation — Promise—Prejudice.*

A mere promise does not create an estoppel if there is not any representation deceiving the opposite party and ihereby causing him to alter his position for the worse. (*Kanhaiya Lal and Daniel*, A.J.Cs.) KANIZ MEHDI BEGAM *v.* RASUL BEG. **48 I.C. 39=5 O.L.J. 551.**

——S. 115—*Representation — Change of position—Necessity for.*

S. 115 of the Act contemplates some act or conduct by which the party pleading an estoppel has been affected and induced to change his position for the worse. (*Kanhaiya Lal and Daniel*, A.J.Cs.) BISHNUNATH SINGH *v.* BALDEO SINGH. **47 I.C. 194=21 O.C. 165.**

——S. 115—*Representation—Gratuitous—Withdrawal—Consent to entry of one's name in revenue papers.*

A party may withdraw any gratuitous admission unless there is some obligation not to do so; a mere consent to the entry of another's name in the revenue papers does not create any such obligation. A petition of compromise filed by the parties in a mutation proceeding whereby defendant's names were agreed to be substituted in respect of a certain property will not estop the plaintiffs from subsequently suing to recover possession thereof, as it did not purport to convey any title nor induced the defendants to alter their position thereby. (*Kanhaiya Lal*, A.J.C.) KALI PRASAD *v.* THAKURDEI. **23 I.C. 965=1 O.L.J. 81.**

——S. 115—*Representation—Prejudice—Cause and effect.*

The representation by the party estopped and the action by the party seeking to estop must be connected together as cause and effect if the doctrine of estoppel is to be held to be applicable. (*Das*, J) RAM SARAM PANDEY *v.* RAM NIHORA SINGH. **57 I.C. 263=2 U.P.L.R. (P.)142.**

——S. 115—*Representation—No prejudice.*

Estoppel is not created by a statement in the first suit by a party when the other party was not in any way prejudiced. (*Scott-Smith*, J.) GUSAUNMAL *v.* RAM RAKHAMAL.
50 I.C. 128.

——S. 115—*Representation— Fraudulent intention if necessary.*

EVIDENCE ACT (I of 1872), S. 115—Representation.

Fraudulent intention on the part of the party making the representation is not necessary to constitute estoppel. (*Mullick and Thornhill*, JJ.) BALBIR PRASAD *v.* JUGUL KISHORE.
46 I.C. 473=3 Pat. L.J. 464.

——S. 115—*Representation — Ambiguous Act.*

An ambiguous act cannot create estoppel just as an ambiguous document cannot create it. (*Young*, J.) MAMSA BROS. *v.* SALLAYJEE.
46 I.C. 609.

——S. 115— *Representation— Existing fact—Law.*

The word 'thing' in S. 115 means a fact and a fact in existence or past. 'Thing' therefore does not include a proposition of law or a promise to make a gift. (*Mccoll*, J.C.) MA PYU v. MAUNG PO CHET. **(1916) 2 U.B.R. 148=39 I.C. 385=11 Bur. L.T. 14.**

——S. 115—*Representation—Negligence—Land standing in revenue registers in joint names of husband and wife—Tax receipts in joint names—Effect—Burma.*

Certain land stood in the revenue registers in the joint names of wife and husband and tax receipts were in the joint names. *Held*, the mere fact of the wife living on the land ought to have put the mortgagee on enquiry as to what the wife's interest was. In a suit on a mortgage no estoppel prevented the wife from showing that the land was her sole and separate property. (*Young*, J.) P.L.R.M. MEYYAPPA CHETTY *v.* MA MO YEIK. **30 I.C. 692=8 Bur. L.T 124 (1).**

——S. 115 — *Representation — Husband and wife.*

A wife was allowed by her husband to take a mortgage in her own name and to take the rent. The mortgagor thought that the transaction concerned her and him (mortgagor) only. The husband is estopped from disputing a redemption from the wife. (*Mccoll*. A.J.C.) NGA TUN BAM *v.* NGA KAN. **12 I.C. 200=4 Bur. L.T. 244.**

——S. 115—*Representation—Omission to ask for relief.*

The omission of a plaintiff to ask for restitution in a suit for a declaration that a decree is null and void does not amount to representation that he relinquishes the right to restitution. Even if it does amount to such a representation it would not operate as an estoppel being a mere statement of intention of promise in future. (*Pratt*, J.C. *and Fawcett*. A.J.C.) GHULAM MAHOMED *v.* LALCHAND.
53 I.C. 552=13 S.L.R. 153.

——S. 115—*Rspresentation—Matter of law—No estoppel.*

A statement of fact only and not of law is referred to by the term 'thing' in S. 115 of the

EVIDENCE ACT (I of 1872), S. 115—Right to Appeal.

Evidence Act. There can be an estoppel by a misrepresentation of fact and not ordinarily of law. (*Pratt*, J.C. *and Hayward*, A.J.C.) MIR MAHOMED VALAD HAYAT KHAN *v.* KHUBOMAL VALAD DINOMAL. **21 I.C. 517= 7 S.L.R. 58.**

Right to Appeal.

———S. 115—*Right to appeal—Estoppel by conduct— Judicial proceedings—Dismissal for default of suit—Appellate Court ordering restoration on payment of compensation to the other party—Compensation accepted—Waiver of right to appeal.*

When a suit dismissed for default is ordered by an appellate Court to be restored on payment of compensation and compensation is accepted by the opposite party, the latter is equitably estopped from appealing from the order of remand. (*Tudball and Rafique*, JJ.) HAZARI LAL *v.* GANGA CHARAN. **18 I.C. 525.**

———S. 115—*Right to appeal.*

Plaintiff brought a suit for partition of certain property. In appeal, the District Court found that in fact it was a suit for a declaration of title and possession. Thereupon, the plaintiff agreed to amend the plaint accordingly. Plaintiff appealed against the order of the District Judge. (*Coxe and Teunon*, JJ.) SHASHI BHUSHAN *v.* JOTINDRA NATH ROY. **38 Cal. 681=10 I.C. 463=15 C.L.J. 443.**

———S. 115—*Right to appeal—Bidding at Court auction.*

The Partition Act does not estop a joint owner who bids at the auction of the joint lands held under orders of the Court under that Act, from filing an appeal in the matter. (*Johnstone*, C.J. *and Smith*, J.) FATEH CHAND *v.* BILAS RAI. **61 P.L.R. 1916= 89 P.W.R. 1916=96 P.R. 1916= 34 I.C. 587=140 P.W.R. 1916.**

Trustee.

———S. 115—*Trustee—Breach of trust—Alienation—Setting aside.*

A trustee may commit a breach of trust in making an alienation and still may be estopped as against a *bona fide* transferee for value without notice of the trust, although the estoppel may not apply to the beneficiaries. (*Mookerjee and Beachcroft*, JJ.) SIDHU SAHU *v.* GOPICHARAN DAS. **18 I.C. 960= 17 C.L.J. 233= [Also 27 I.C. 400=42 Cal. 455]**

———S. 115—*Trustee—Alienation of trust property—Breach of trust—Suit by alienor to recover trust property*—Bona-fide *purchaser.*

A trustee of a temple by whom trust property is alienated for his own purpose is not estopped from instituting a suit as trustee to recover the property for the trust from a *bona fide* purchaser for value. 6 M.L.J. 270 and 19 M.L.J. 305 Foll. 14 M.I.A. 289 at 308 Rel. 6 A. 24 and 42 Cal. 455 Dist. (*Spencer and Krishnan*, JJ.) YASIM SAHIB *v.* EKAMBARA AIYAR. **37 M.L.J. 698=26 M.L.T. 441= 54 I.C. 497=10 L.W. 672.**

EVIDENCE ACT (I of 1872), S. 115—Waiver and Estoppel—Distinction.

Vendor and Purchaser.

———S. 115 — *Vendor and purchaser—Estoppel by deed.*

The acceptance of a conveyance in fee and entry into possession do not estop a grantee from denying the title or seisin of his grantor unless he claims under the deed. (*Mookerjee and Teunon*, JJ.) BEPIN BEHARI MITTER *v.* TINKOWARI PATHAK. **13 C.L.J. 271= 9 I.C. 374=15 C.W.N. 976.**

———S. 115—*Vendor and purchaser—Denial of title when allowed.*

The vendor is not estopped from denying the correctness of his title so far as the claim of a third person is concerned, but he should not be allowed to do so when he is trying to play the vendee false by supporting that claim. (*Chevis*, J.) SHAM SINGH *v.* PREM SINGH. **17 I.C. 508=260 P.W.R. 1912.**

———S. 115—*Vendor and purchaser — Person taking a conveyance of property—If can plead non-transferability.*

A person by whom a conveyance of certain property is taken cannot subsequently plead that the property was not transferable. (*Lindsay*, J.C.) RAMA SANKAR *v.* NANIK PRASAD. **1 O.L.J. 187=24 I.C. 32= 17 O.C. 150.**

———S. 115—*Vendor and purchaser — Transfer of Property*—Kabzadari *without right of transfer — Transfer in breach of terms— Whether can be invalidated at transferor's instance.*

The transferor himself cannot get invalidated a transfer of lands *held Kabzadari* without any right of transfer in breach of the terms under which they are held, the condition forbidding transfer being only for the benefit of the superior proprietor. (*Chamier*, J.C.) MIRDAY BEHARI *v.* PRAG TIWARI. **11 I.C. 527= 14 O.C. 144.**

Waiver and Estoppel—Distinction.

———S. 115—*Waiver— Compromise—Right given up, if can be claimed afterwards—Estoppel.*

Where in compromising a suit, certain rights are given up, the parties are estopped from claiming those rights afterwards. (*Mears* C.J. *and Banerji*, J.) MAHAMMAD IBRAHIM *v.* CHANDAN SINGH. **63 I.C. 727= 3 U.P.L.R. (A.) 187.**

———S. 115—*Waiver—Estoppel — Distinction.*

Estoppel and waiver are questions of conduct and we must necessarily determine them on

EVIDENCE ACT (I of 1872), S. 115—Miscellaneous.

the facts of each case. If each of the parties has by his acts intentionally caused the other to believe that the payment was a regular satisfaction of the obligation and the parties have acted on that belief, neither can afterwards deny the regularity. There is no distinction as to the law of waiver and estoppel between bonds and decrees, in regard to rights which are at the option of the creditor. When the creditor can on default of payment of interest by instalments, call up or abstain from calling up the principal debt, then for deciding whether or not waiver or estoppel has suspended or destroyed that option, it is immaterial whether the transaction vests on an instalment bond or an instalment decree. It is a fundamental proposition of law that waiver cannot be proved by payment and acceptance of overdue instalments alone. If a creditor's right to demand the whole debt depends on two consecutive instalments, and the first default is condoned by waiver, the occurrence of any succeeding default will not revive it. No conditional waiver of the first default can take place without express agreement. (*Batten and Stanyon*, A.J.Cs.) BALLABHDAS *v.* DALIP-SINGH. 12 I.C. 741=7 N L R. 147.

Miscellaneous.

———S. 115—*Community—Representatives of community—Dealings with—Pre-emption—Villagers if bound.*

The plaintiffs, members of a village Community are precluded from claiming to pre-empt the sale which the vendees succeeded in obtaining through the active instrumentality of two of the villagers as representatives of the whole village. (*Lord Buckmaster*) IDRIS *v.* MRS. JANE SKINNER. 82 P.R. 1919=56 I.C. 723=48 P.W.R. 1919 (P.C).

———S. 115—*Pre-emption—Refusal of offer.*

The refusal of a pre-emptor when property was offered to him before sale according to a *wajib-ul-arz* clause creates estoppel. (*Richards*, C.J. *and Rafique*, *J.*) TODAR SINGH *v.* KEHIRI SINGH. 50 I.C. 120=17 A.L.J. 290.

———S. 115—*Corporation—University when bound by act of its officer.*

The representations made by any individual officer without authority or sanction of the University are not binding on the University. (*Choudhuri*, J.) *In the matter of* A. RASUL. 41 Cal. 518=24 I.C. 405=18 C.W.N. 820.

———S. 115—*Change of position.*

When parties have changed positions neither can go back upon the arrangement. (*Kanhaiya Lal*, J.C.) RAGHUBAR *v.* RAM BHAROSE. 8 O.L.J. 392=66 I.C. 412.

———S. 115—*Assignor and assignee—Right to transfer.*

An assignor is estopped from pleading that he or she was incompetent to effect the assignment. (*Piggott*, J.C. *and Sabonadière*, A.J.C.) NAND KISHORE *v.* MANGAL DIN. 21 I.C. 8.

EVIDENCE ACT (I of 1872), S. 116—Adverse Possession.

———S. 115—*Estoppel and* Res judicata—*Difference.*

Estoppel precludes denial of what is the result of an act or omission and *Res judicata* aims at ending litigation. (*Miller*, C.J. *and Coutts*, J.) KALI DAYAL *v.* UMESH PROSAD. 1 P. 174=3 P.L.T. 506=1922 Pat. 33=1922 P. 63.

———S. 115—*Estoppel—Plea, how to be raised.*

The rule of estoppel is a rule of evidence and must be pleaded with sufficient clearness. (*Das and Ross*, JJ.) ABDUR RAHIM *v.* BARIRA. 2 P.L.T. 556=61 I.C. 807=6 P.L.J. 273.

———Ss. 115 and 91 to 94—*Estoppel—Scope of the sections.*

Section 115 of the Evidence Act may no doubt override sections 91 to 94 because the law of estoppel is one which must prevail against a rule of procedure only. If a person has by the act permitted the other party to believe that the agreement was other than that embodied in the document and has caused him to act upon that belief he cannot fall back upon the provisions of section 92 and thereby escape from the consequences of his own actions. But this is a different thing from holding that when such conduct does not amount to an estoppel it may be proved in evidence or in order to show that the intention of the parties was something other than that expressed by them in the written document. If the written document is perfectly clear in its terms and applies to existing facts, evidence to show that it was not meant to apply to such facts is distinctly excluded by section 94 of the Evidence Act. (*Pipon*, J.C.) DHANNA RAM *v.* CHHABIL DAS. 72 I.C. 931.

———S. 116.

ADVERSE POSSESSION.
ATTORNMENT.
CO-SHARERS.
JUSTERTII.
LICENSE.
MORTGAGOR AND MORTGAGEE.
NON-TRANSFERABLE TENURE.
PLEA OF OWNERSHIP BY TENANT.
SCOPE.
TENANT ALREADY IN POSSESSION.
TENANT HOLDING OVER.
TRANSFEREE FROM LESSOR.
TRUST PROPERTY.
WHEN TENANT CAN DENY.
MISCELLANEOUS.

Adverse Possession.

———S. 116—*Adverse possession—Tenant building upon land of landlord — Silence—Effect.*

If the landlord allows the buildings built on his land to stand on for over 12 years, he

EVIDENCE ACT (I of 1872), S. 116—Adverse Possession.

cannot claim their demolition. (*Lindsay*, J.) MUSSAMMAT DELARI KOER *v.* SALIG RAM.
4 U.P.L.R. (A) 82 = 1922 A. 210.

——— S 116—*Adverse possession—Landlord and tenant—Tenant not to set up title during tenancy.*

If a person obtains possession as a tenant, he cannot himself change the nature of his holding by unilateral act, *e.g.* alleging title adverse to that of the lessor or getting an entry adverse to the latter made in records or by refusing to pay rent. But the case is different if the tenant's repudiation of title is accepted by the landlord. (*Chevis*, J.) GHAZU *v.* BAHADUR. **236 P L R. 1911 = 11 I.C. 639 = 152 P.W.R. 1911.**

———S. 116—*Adverse possession—Landlord and tenant.*

Any adverse action taken by a third party cannot have the effect of terminating the relationship of landlord and tenant and the tenant will be estopped from denying his landlord's title by S. 116 of the Act. The relationship of landlord and tenant already existing cannot be dissolved by the grant of a *patta* by the Government to the tenant of a third person nor can adverse possession be started by such grant of *patta*. 12 M. 422, dist,; 28 M.L.J. 44; 2 M. 226; Dissented from; 1918 M.W.N. 38, Foll. (*Seshagiri Aiyar and Napier*, JJ.) ELEDATH THANAZHI *v.* ELIANGATIL SANKARA VALIA. **(1918) M.W.N. 376 = 7 L.W. 574 = 8 L.W. 44 = 45 I.C. 636 = 24 M.L T. 79.**

———S. 116—*Adverse possession — Under-proprietary.*

Adverse possession is not enough to sustain a claim to under-proprietary rights by a lessee. (*Lindsay*, J.C. *and Kanhaiya Lal*, A J. C.) RAM ASRE *v.* RAJA MUHAMMAD ABDUL HASAN KHAN. **30 I.C. 218 = 2 O L J. 241.**

Attornment.

———S. 116—*Attornment—Lease of unrecognised sub-division of bhag — Tenant cannot plead the invalidity of lease.*

An unrecognised sub-division of a *Narwa* was mortgaged by defendant; but he remained in possession of it under a rent note executed in favour of the mortgagee. The mortgagee sued the defendant in ejectment. *Held*, that defendant having attorned to plaintiff it was not open to him to contend in the ejectment suit that plaintiff had no right to let out the property on rent; and plaintiff was entitled to succeed. (*Macleod*, C.J, *and Heaton*, J.) DEVIDAS DWARAKADAS *v.* SHAMLAL GOPAL.
58 I.C. 595 = 22 Bom. L.R. 149.

———S. 116—*Attornment— Landlord and tenant— Estoppel — Facts necessary to constitute estoppel.*

Unless a tenant was actually let into possession by the landlord or he had attorned to him,

EVIDENCE ACT (I of 1872), S. 116—Co-sharers.

estoppel does not preclude him from denying the landlord's title. (*Woodroffe and Carnduff*, JJ.) SIBU SANT *v.* METAI CHARAN DAS,
9 I.C. 806 = 15 C L J. 114.

———S. 116—*Attornment—Estoppel — Possession—Evidence of attornment—Essentials of estoppel.*

Payment of rent even without possession is evidence of attornment. A tenant is not estopped by payment of rent, from questioning the landlord's title. (*White*, C.J. *and Abdur Rahim*, J.) PULLAYA CHETTY *v.* VEDACHELA PILLAI. **(1911) 2 M.W.N. 376 = 11 I.C. 24 = 10 M.L.T. 44.**

———S. 116—*Attornment—Payment of rent by tenant—Whether tenant can question landlord's title.*

The mere fact that the tenant has paid rent to the person recorded as landlord of the patti does not prevent his questioning the latter's title, as he has not led the landlord to believe in any representation. A person who is put in possession as tenant by another cannot deny the title of the latter unless and until he gives up possession. But, if a person already in possession attorns to another he is not thereby estopped from denying the latter's title. 11 Cal. 519, referred to. (*Mittra*, A.C.J.) SETH SAGUNCHAND *v.* LALA CHHABILERAM.
1922 Nag. 60.

Co-Sharers.

———S. 116—*Co-sharer, landlords.*

Tenant in possession under *Sarkhat*. *Held*, that a *Sarkhat* having been executed by the deft in favour of the plff, the deft. was estopped from denying the plaintiff's right to eject him, though plaintiff may be only a fractionalsharer of the house. (*Knox*, A.J.C. *and Banerjee*, J.) MATHRA PRASAD *v.* GOKUL CHAND.
41 All. 654 = 17 A L J. 835 = 51 I.C. 548 = 1 U.P.L.R. (H.C.) 100.

———S. 116—*Co-sharer landlords—Denial title.*

Where a tenant agrees with a co-sharer landlord to occupy land and pay him the rent, he is estopped in a suit for rent by the co-sharer landlord from pleading that the other co-sharers should join in the suit. (*Piggott and Walsh*, JJ.) JAHANGIRA *v.* KARRAR HUSAIN.
44 I.C. 513 = 16 A.L.J. 212.

———S. 116—*Co-sharer landlords.*

In a suit for ejectment on the expiry of lease the lessee whom the plff. had brought on the land and who was holding under a lease granted by plff. cannot say, that the latter is not the sole landlord. (*Fletcher and Richrdson*, JJ.) ALIMADDIN *v.* AINADDIN MAJUMDAR.
38 I.C. 534.

———S. 116—*Co-sharer landlords—Lease by one.*

A person by whom a lease is taken from one several co-sharers cannot dispute his lessor's

EVIDENCE ACT (I of 1872), S. 116—Justertii,

exclusive title to receive the rent or to sue in ejectment. (*Maung Kin*, J.) MAUNG SHWE GYAW *v.* MA SHWE THET. **34 I.C. 71.**

Justertii.

———**S. 116**—*Justertii — Possession taken under—Denial of title of landlord—Estoppel.*

Where the defendant has executed a Kabuliyat in favour of the plaintiff and obtained possession of certain lands as tenant on the strength of that document, he is estopped from denying the title or possession of his grantor in a suit for rent and from setting up that the plaintiff is merely a benamidar for some other person. (*C. C. Ghose and Panton*, JJ.) PRABHAT CHANDRA CHATTERJI *v.* BIJOY CHAND MAHATAP. **50 C. 572=1924 Cal. 84.**

———**S. 116** — *Justertii — Landlord and tenant—Denial of title—Estoppel.*

A tenant put in possession of land by one person cannot alter the character of his possession and make it adverse to the landlord by going over to another person and paying rent to him. (*Fletcher and Cuming*, JJ.) ABDUL HAKIM *v.* PANA MIA MIAJI. **51 I.C. 494.**

License.

———**S. 116** — *License — Trade mark — Repudiation of contract by licensee.*

A licensee cannot question the right of the licensor; and without the concurrence of the licensor, the contract between him and the licensee cannot be repudiated by the latter alone. (*Imam*, J.) JAGANNATH & CO. *v.* CRESSWELL. **22 I.C. 372=40 Cal. 814.**

———**S. 116** — *License — Licensor and licensee.*

A licensee is estopped from denying the title of the licensor at the time of grant though no such relationship exists at the time of suit. (*Jenkins*, C.J., *and Chatterjee*, J.) DUKHIMONI DASI *v.* TURSI CHARAN. **13 I.C. 512.**

Mortgagor and Mortgagee.

———**S. 116**—*Mortgagor and mortgagee—Estoppel.*

The title of either mortgagor or mortgagee under a mortgage cannot be denied by each other. In 1878, A's property was sold by A's widow to B who mortgaged it to C. in 1892. After the death of A's widow, A's reversionary heir D obtained possession of the property colluding either with B or his tenants. C sued for foreclosure on the mortgage. D resisted that he, as reversionary heir of A was entitled to the property free from the mortgage. *Held* that (1) B as mortgagor was estopped from denying the mortgagee's title and as D got into possession with the help of B, the rule of estoppel applied to B, extended to D. The latter could not, resist the mortgagee's claim but could sue for possession of the property by a separate suit. 13 M. 335, Foll. (2) The fraud of D was sufficient in law to deprive him of the right to be heard in defence to the

EVIDENCE ACT (I of 1872), S. 116—Scope.

suit that he was entitled to the property as reversionary heir of A. (*Russell and Chandavarkar*, JJ.) HILLAYA *v.* NARAYANAPPA TIMMAYA. **36 Bom. 185=12 I.C. 913=13 Bom. L.R. 1200.**

———**S. 116**—*Mortgagor and mortgagee.*

A mortgagor is estopped from disputing his right to mortgage as he himself covenants his good title at all events. (*Chandavarkar and Hayward*, JJ.) MAHOMED IBRAHIM *v.* SHEIKH HAMJA. **38 Bom. 507=12 I.C. 387=13 Bom. L.R. 895.**

———**S. 116**—*Mortgagor and mortgagee—Mortgagee in possession.*

The deft. a mortgagee in possession is not estopped under S. 116 of the Evidence Act from requiring the plaintiff to make out his title to redeem the property by virtue of his purchase from the mortgagor's legal representative. (*Chitty and Beachcroft*, JJ.) DENIBESWAR SARMA BERATHAKUR *v.* BET HORAM-SAI KIA. **40 I.C. 648.**

Non-transferable Tenure.

———**S. 116**—*Non-transferable tenure.*

In a suit for sale on a mortgage of Mandadari tenure it is open to the mortgagor to raise a plea as to the illegality of the mortgage as both parties must have known at the time of execution of the mortgage, that the tenure was not transferable by law. (*Banerjee and Tudball*, JJ.) KIDAR NATH *v.* NAIPAL SINGH. **34 All. 155=12 I.C. 922=8 A.L.J. 1308.**

———**S. 116**—*Non-transferable tenure.*

Where a transferee of a part of a non-transferable occupancy holding requires the landlord to prove his title, there is no repudiation of title. (*Teunon and Chaudhuri*, JJ.) MEHDI ALI KHAN PANEE *v.* BASIRUDDIN CHAUDHURY. **57 I.C. 956.**

Plea of Ownership by Tenant.

———**S. 116**—*Plea of ownership by tenant, when available.*

The tenant must surrender possession to the landlord before a claim of ownership in himself can be set up by him, when once the relation of landlord and tenant has been proved. (*Broadway*, J.) ALLAH BAKSH *v.* LAL KHAN. **67 I.C. 269=2 Lah. L.J. 662.**

Scope.

———**S. 116**—*Scope—Execution of lease.*

Whatever may have been the nature of a person's possession prior to a lease, once he takes a lease-deed in respect of the land from another, he is thereafter estopped from denying the title of his lessor. (*Rafique and Stuart*, JJ.) SITAL PRASAD *v.* BADRI PRASAD. **20 A.L.J. 907=1923 All. 53.**

———**S. 116**—*Scope of—Landlord and tenant—Third parties not affected.*

Persons not claiming possession of land under the tenant are not estopped from denying the

EVIDENCE ACT (I of 1872), S. 116—Scope.

title of the lessor. *Tadman* v. *Henman* (1893), 2 Q. B 168, Ref. (*Stuart and Kanhaiya Lal*, JJ.) MAHARAJA OF JAIPUR *v.* SURJAN SINGH. **44 All 671=20 A L J. 616= L R. 3 A. 392=1922 All. 383.**

——— **S. 116**—*Scope—Lessee from mortgagor.*

A lessee from a mortgagor cannot question the validity of the mortgage in a suit for ejectment of the lessee. (*Newbould and Abdul Majid*, JJ.) SHASHI BHUSHAN *v.* DEB NATH. **60 I.C 705.**

——— **S. 116**—*Scope—Denial after lease term.*

S. 116 does not mean that after the expiration of the tenancy the tenant is free to dispute the title of the landlord when the possession obtained by the landlord's permission is retained by the tenant. (*Sanderson*, C.J. *and Mookerjee*, J.) BHAIGANT *v.* HIMMAT. **20 C.W N. 1335=35 I.C. 7=24 C.L J. 103.**

——— **S. 116**—*Scope—Estoppel—Tenant.*

It is not open to a tenant to deny his landlord's title so long as he fails to deliver possession to him. (*Spencer and Seshagiri Aiyar*, JJ.) RAMA THANTHRI *v.* SECRETARY OF STATE. **42 I.C. 290**

——— **S. 116**—*Scope.*

The law of estoppel is not wholly contained in S. 116 of the Evidence Act. (*Sadasiva Aiyar and Napier*, JJ.) THAYELBAGAM PILLAI *v.* VENKATA RAMA KRISHNAYAN. **33 I C. 858 (1)=(1916) 1 M.W.N. 119.**

——— **S. 116**—*Scope—Denial after lease term—Landlord's title—Denial of.*

A tenant in possession cannot even after the expiration of the lease, deny his landlord's title without proving surrender or attornment to another or eviction by title paramount or notice to his original landlord that he intends to claim under another and more valid title. Eviction must be actual and not merely constructive and unexecuted decree for possession is not enough to constitute eviction. (*Ayling and Spencer*, JJ.) DEVAL RAJU *v.* MAHOMED JAFFAR SAHEB. **19 I.C. 585=36 Mad. 58**

——— **S. 116**—*Scope—Liability to pay rent to real owner.*

S. 116 does not operate as estoppel after a tenancy has come to an end, and so a tenant is liable to pay rent to the real owner. (*Dhobley*, A J C.) MAHADEO *v.* JAINARAYAN. **62 I.C. 880=4 N.L.J. 61 and 207.**

——— **S. 116**—*Scope—Lessee—Estoppel.*

A lessee is estopped from denying his lessor's title to grant the lease. (*Macnair*, A.J.C.) CHANDOO *v.* PARBHOO. **53 I.C. 707.**

——— **S. 116**—*Scope of.*

Where the defendant held a heritable permanent and transferable right, he was estopped from denying rights of grantee. (*Coutts and Macpherson*, JJ.) MUKHERJI *v.* NARAYANSAH **6 P.L.J. 657=1922 P. 161.**

EVIDENCE ACT (I of 1872), S. 116—Tenant holding over.

Tenant already in possession.

——— **S. 116**—*Tenant already in possession.*

S. 116 applies only to cases where the landlord has put the tenant in possession and not to where the tenant has been already in possession. 11 C. 519, Dist. (*Ayling and Hannay*, JJ.) YERRAGUNTLA SESHACHARLU *v.* MUKKUMALLA CHINNIAH. **25 I.C. 721.**

——— **S 116**—*Tenant already in possession—Landlord and tenant—Estoppel.*

S. 116 of the Evidence Act applies both to tenants put into possession at the beginning of the lease and to lessees already in possession and continued in it. 19 M. 200, *Foll.* (*Oldfield and Tyabji*, JJ.) ADAT RAO GAVAYYA *v.* DANDI SEETHARAMASWAMI. **28 I C. 615= 1 L.W. 821.**

——— **S. 116**—*Tenant already in possession — Denial of title — Admission through mistake or ignorance.*

Though, under section 116 of the Evidence Act no tenant can deny his landlord's title existing at the commencement of the lease, the rule only applies where the tenant has been let into possession by such landlord. If through ignorance or mistake a tenant has executed a rent-note and has not been put in possession by the lessor it seems that he can dispute the lessor's title. (*Prideaux*, A.J.C.) MT. LAXMIBAI *v.* DEVI. **1924 Nag. 62.**

Tenant holding over.

——— **S. 116**—*Tenant holding over—Denial of title.*

It is not open to a tenant who is holding over after notice to quit to deny the title of his landlord. S. 116 of the Evidence Act applies to the case and he cannot deny his landlord's title however defective it may be without first surrendering possession to him. (*Sir George Farewell,*) MUSSAMMAT BILAS KUNWAR *v.* DESRAJ RANJIT SINGH. **37 All. 551= 42 I A. 202=19 C W N 1207= 29 M L J 335=2 L W 830= 18 M L T. 248=13 A L J 991= 17 Bom L R. 1005=22 C L J 516= 30 I C. 299=(1918) M W N. 757 (P.C.).**

——— **S. 116**—*Tenant holding over.*

A tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord. 37 A. 557 P.C., Rel. A tenant who wishes to dispute his landlord's title must not only see that the tenancy has come to an end but that the possession which was in him as a tenant has been surrendered. A tenant who holds over and remains in possession, is estopped from using that possession to support a case in which he denies the landlord's title. (*Macleod*, C J. *and Hayward*, J.) EKOBA GOVINDSHET VANI *v.* DAYARAM NARAIN. **55 I C. 353= 22 Bom. L.R. 82.**

EVIDENCE ACT (I of 1872), S. 116—Transferee from Lessor.

Transferee from Lessor.

———S. 116—*Transferee from lessor.*

Lessees cannot deny the title of persons by whom the place of the original lessor has been taken. (*Kanhaiya Lal*, A.C.J.) TIRBAVAN BAHADUR SINGH *v.* MUKTA PRASAD.
22 I.C. 125.

———**S. 116**—*Transferee from lessor—Landlord and tenant—Estoppel—Scope of the rule.*

The rule that a tenant may not dispute his landlord's title applies only to the title of the original landlord who let him to possession and not to that of an owner by whom the property has been acquired by some title derived from the original lessor. (*Fox*, C.J.) MAUNG PO SHIN *v.* MAHOMED THAMBI.
8 Bur. L.T. 234=30 I.C. 753 (2)=8 L.B.R. 270.

Trust Property.

———**S. 116**—*Trust property — Mutwalli himself a beneficiary.*

Where the trustee is justified by the Wakfnama in handing over to the successive life-tenants the possession of the trust properties, so long as he does not abdicate the position of the Mutwalli assigned to him, and the life-tenants obtain possession of the properties with the consent of the Mutwalli on the footing of their title as life-tenants under the Wakfnama the life tenants cannot be permitted to deny that the person from whom the possession was claimed had a title to such possession when they were let into it. The estoppel so created binds all those who claim under or through the life-tenants so obtaining possession, especially where the person from whom possession is claimed is not a bare trustee but is also entitled to a contingent beneficial remainder on failure of certain limitations. Where a Wakfnama must be treated as valid between certain parties owing to estoppel the Mutwalli, when his beneficial remainder has taken effect, is entitled to the possession of the property under the terms of the Wakfnama both as trustee and as beneficiary. (*Scott*, C.J. *and Chandavarkar*, J.) MAHOMED IBRAHIM *v.* ABDUL LATIF. **37 Bom 447=17 I.C. 689=14 Bom. L.R. 987.**

———**S. 116**—*Trust property — Charitable-trust.*

The manager of a charity let the defts. into possession under a lease of lands belonging to the charity. In a suit for executors of manager, defendants pleaded, that the testator had no power of disposition over the lands. The defendants were not estopped from pleading this. (*Abdur Rahim*, C.J.) VAITHYANATH AIYAR *v.* SUBRAMANAYA AIYAR.
38 I.C. 608=4 L.W. 349.

———**S. 116**—*Trust property—Trusteeship invalid.*

Where a *Kanom* was demised by the plff. taking as trustee of certain temple, to the first deft. who transferred it to the second defendant, and in the suit by him for recovery of land demised, it was found that the plaintiff was not a trustee at the time of the institution of the suit, having been declared by Civil Courts previously not to be a trustee. *Held*, that the suit must fail as he was not the trustee and that defendant was not estopped from denying plaintiff's trusteeship, though he could not deny the title of the temple. (*Benson and Sundara Aiyar*, JJ.) PATTAIKARA MANAKKAL *v.* CHVORAKKAPATTI MUNDE.
37 Mad. 373=11 M.L.T. 353=14 I.C. 168=(1912) M.W.N. 443.

EVIDENCE ACT (I of 1872), S. 116—When tenant can deny.

When tenant can deny.

———**S. 116**—*When tenant can deny—'At the beginning of the tenancy'—Meaning of.*

The words are expressly inserted in S. 116 to show that the tenant is not prevented from showing that after the commencement of the tenancy, the estate of the landlord devolved on some other person. (*Richardson*, C.J. *and Rafique*, J.) GANPAT RAI *v* MULTAN.
38 All 226=33 I.C. 97=14 A.L.J. 263.

———**S. 116**—*When tenant can deny—Landlord and tenant—Payment of rent—Attornment—Estoppel when arises.*

A tenant who pays regularly to the landlord and by whom the landlord's title has thus been acknowledged is estopped as a general rule from questioning his title but he can do so on the ground that the payment of rent by him was due to mistake, ignorance of title, misrepresentation or fraud on the part of the person to whom the rent was paid. (*Richards*, C.J. *and Banerjee*, J.) GIRDHARI LAL *v.* KALOO MESTRI. **22 I.C. 248.**

———**S. 116**—*When tenant can deny—Landlord and tenant—Payment of rent—Attornment.*

A tenant by whom rent is paid for several months to a person as landlord cannot question the payee's title to recover rent except on proof of fraud, mistake, misrepresentation in the payment of rent. (*Rafique*, J.) GIRDHARI LAL *v.* KALLO MISTRI. **18 I.C. 916=11 A.L.J. 341.**

———**S. 116**—*When tenant can deny—Subsequent cesser of landlord's title.*

A tenant can prove a subsequent cesser of the landlord's title and he can do so by showing that the title has determined is by proving and eviction or the equivalent thereof by a title paramount. (*Sanderson*, C.J. *and Richardson*, J.) RAMCHANDRA CHATTERJI *v.* PRAMATHA NATH. **63 I.C. 754.**

———**S. 116**—*When tenant can deny.*

Under the section the tenant is not estopped from questioning the title of the landlord after the tenancy has terminated. (*Newbould*, J.) SAKAYAT MOLLAH *v.* ALAM MOLLAH.
33 I.C. 98.

EVIDENCE ACT (I of 1872), S. 116—When tenant can deny.

———S. 116—*When tenant can deny—At the beginning of the tenancy.*

The words in S. 116 "at the beginning of the tenancy" only apply to cases in which tenants are put into possession of tenancy by the person to whom they have attorned and not to cases in which the tenants have previously been in possession. Where there was no proof of any rent ever having been paid or that the defendant was inducted as a tenant by the plaintiff and the parties were brothers and admittedly the house was once joint property. *Held* in these circumstances the defendant was not estopped from denying that he was the plaintiff's tenant. (*Campell*, J.) RISHI KESH *v.* MELA RAM. **1923 Lah. 483.**

———S. 116—*When tenant can deny—Duty to surrender possession.*

A tenant in possession cannot, even after the expiration of his lease deny his landlord's title without actually and openly surrendering possesion to him. Once the relationship of landlord and tenant is established the tenant must surrender possession before he can set up a claim to be the real owner. 123 P.R. 1919, Foll. (*Broadway*, J.) ALLAH BAKHSH *v.* LAL KHAN. **67 I.C. 269=2 L.L.J. 662.**

———S. 116—*When tenant can deny—Landlord in possession—Lease term expired—Rights of lessee.*

A lessee whose lease has expired cannot eviot the landlord legally in possession of the property although the landlord was let into possession by the *quondam* tenant. A tenant cannot deny even a defective title of the lessor without openly surrendering the land to him. (*Le-Rossignol and Wilberforce*, JJ.) MUHAMAD MUMTAZ HUSSAIN *v.* NAURANG AHMAD. **60 I.C. 502.**

———S. 116—*When tenant can deny—Landlord and tenant—Duty to restore possession—Ignorance coercion.*

A tenant in possession cannot even after the tenancy period is over, deny the landlord's title, without actually and openly surrendering possession to him. 24 C.L.J. 103; 38 A. 226; 73 A. 557 P.C., Foll. A tenant by whom a lease has been executed but who is not in possession is estopped from denying the landlord's title, in the absence of proof that he executed the lease in ignorance of his lessor's title or by fraud or misrepresentation or coercion. (*Martineau*, J.) MAKHAN SINGH *v.* BAISAKH RAM SHAH. **50 I.C. 591=123 P.R. 1919.**

———S. 116—*When tenant can deny—Nature of estoppel—'At the beginning of tenancy,' Contract Act, Ss. 13 and 20.*

Lessee though not let into possession by lessor, cannot dispute his title unless he can show that he was ignorant of his lessor's defective title or he was granted lease by fraud, coercion, etc. (*Abdur Rahim*, O.C.J.) It is open to a tenant to deny the title of landlord's

EVIDENCE ACT (I of 1872), S. 116—Miscellaneous.

predecessor in title. The estoppel is absolute. 'At the beginning of the tenancy' refers to the beginning of occupation of land by tenant or his predecessor in title. (*Seshagiri, Aiyar*, J.) The contract of tenancy may be avoided if it is subject to defects mentioned in Ss 13 and 20, Contract Act. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATA CHETTY *v.* AIYANNA GOUNDEN. **40 Mad 561=31 M.L.J. 712=20 M.L.T. 457=(1917) M.W.N. 53=35 I.C. 817=5 L.W. 304.**

Miscellaneous.

———S. 116—*When tenant cannot deny—Avoidance of lease — Real or immoveable property.*

A lessee is estopped from denying the lessor's right in leasing the property where the lessee entered into the lease owing to the misrepresentation by the lessor that he was the owner of the property leased. Where the lessor was in peaceful possession for over sixty years of the *dar* (space between two fishing stakes) and let out to the lessee, the lessee cannot avoid the agreement about the lease on the footing of fraud or mistake though the lessor may not have a private and exclusive fishery right in the particular waters. A several fishery is an incorporeal hereditament and is real or immoveable property within S. 116. (*Marten*, J.) LAKSHMAN *v.* RAMJI. **23 Bom. L.R. 939.**

———S. 116—*Mutual estoppel.*

Both landlord and tenant are estopped from denying each other's title when the lease has been executed and the parties have enjoyed the benefits. (*Mookerjee and Cuming*, JJ.) BAMAN DAS BHATTACHARYYA *v.* NILMADHAB SAHA. **44 Cal. 771=20 C.W.N. 1340=38 I.C. 734=24 C.L.J. 541.**

———S. 116—Zur-i-peshgi *lease—Party to, if can question lessee's title to recover rent from under lessee.*

It can not be contended by a party to a *Zur-i-peshgi* lease granted to the plantiff that the plaintiff is not entitled to demand rent from the tenant under him. (*Richardson and Newbould*, JJ.) KAMPTA PROSAD RAI *v.* KULDIP RAI. **20 I.C. 70.**

———S. 116—*Landlord and tenant.*

Suit for declaration by tenant is not maintainable. (*Leslie-Jones and Moti Sagar*, JJ.) MT. JAIKNAR *v.* LABHU. **4 Lah. L.J. 207=1922 L. 163.**

———S. 116—*Renewal of lease.*

An assignee of a *kanom* by whom the title of the mortgagor (*Jenmi*) is acknowledged by accepting a fresh *kanom* deed is estopped from denying the latter's title, although he was not let into possession by the mortgagor. 40 Mad. 561, Foll.; 36 Bom 185 Rel. (*Seshagiri Aiyar and Napier*, JJ.) GOVINDA MENON *v.* KUPPAN NAMBUDRIPAD. **21 M.L.T. 472=(1918) M.W.N. 20=49 I.C. 312=37 M.L.J. 617.**

EVIDENCE ACT (I of 1872), S 116 — Miscellaneous.

——— S 116 — *Sub-tenants in waqf property.*

Sub-tenants under a lessee of a *waqf* property are estopped, in a claim of rent, from questioning their lessor's title on the ground that he came into possession under an invalid lease. *Srinivasa Aiyangar*, J.) BALU MUDALI *v.* DURVASULU PILLAI 4 L.W 71 = 34 I.C. 810 = (1916) 2 M.W.N. 276.

———S 116 — *Grant — Limited grant only on performance of certain conditions — Resumption on non performance — Alienation by grantee — Title inconsistent with terms of grant.*

A grantee of land attached to an office is estopped from setting up a title inconsistent with the terms of the grant and the estoppel extends to an alienee from such grantee. (*Sadasiva Aiyar and Napier*, JJ.) THAYELBAGAM PILLAI *v.* VENKATARAMA KRISHNAYAN. 33 I.C. 818 = (1916) 1 M.W.N. 119.

———S. 116 — *Minor tenant.*

Where a minor had derived a benefit from a tenure created by a lease executed on his behalf by his *de facto* guardian, under S. 116 of the Evidence Act, the minor cannot deny the title of the person in whose favour the lease was executed. *Kanhaiya Lal and Daniels*, A.J.Cs.) KANIZ MEHDI BEGUM *v* RASUL BEG. 48 I.C. 39 = 5 O.L.J. 551.

———S. 116 — *Estoppel against person to whom property is transferred.*

A person to whom property is transferred is estopped from questioning a deed by which some other property is given to another in consideration of this other withdrawing all the claim to the property so transferred. (*Stuart and Kanhaiya Lal*, A.J.Cs.) DIP NARAIN SINGH *v.* HARGOBIND SINGH. 37 I.C. 69 = 3 O.L.J. 528.

———S. 116 — *Landlord and tenant — Building by tenant on 'Sahan' — Minority of landlord — Absence of objection.*

Where plaintiffs and landlords were either minors or absentee landlords, it is open to them to plead that tenant built structures without their consent. (*Chamier*, J.C.) BIKRAMAJIT SINGH *v.* SARNAN. 10 I.C. 186.

——— S 116 — *Status of landlord — Tenant's right to dispute.*

Under S. 116 of the Evidence Act a tenant is precluded from denying the title of the landlord, but he is not estopped from questioning the status of his landlord. (*Coutts and Das*, JJ.) LOKORAM *v.* BIDYA RAM MAHTO. 53 I.C. 43 = 1920 Pat. 15.

———S. 116 — *'Once a tenant always a tenant' — Applicability.*

For the application of this maxim it is necessary to first prove that the person desiring to apply it, was a tenant at one time. (*Mullick and Jwala Prasad*, JJ.) BALDEO SINGH *v.* BRAHMADEO NARAYAN SINGH. 39 I.C. 107 = 1 Pat. L.W. 721.

EVIDENCE ACT (I of 1872), S. 118.

———S. 117 — *Licensee of trade-mark — Estoppel.*

Under S. 117 a licensee of a trade-mark shall be estopped from denying that his licensor had, at the time when the license commenced, authority to grant such license. (*Jenkins*, C.J., *and Stephen*, J.) G. S. HANNAH *v.* MESSRS. JAGANNATH & Co. 27 I.C. 483 = 19 C.W.N. 1.

———S. 118 — *Evidence of minor — Admissibility of without oath.*

The evidence of witness of tender years though taken without solemn affirmation is admissible in evidence, though due care and caution are necessary in the receipt of such evidence. But the Court must be satisfied before receiving the evidence, if the witness is capable of understanding the nature and obligation of an oath. (*Shah and Marten*, JJ.) HARI RAMJI PAVAR *v.* EMPEROR 45 I.C. 497 = 19 Cr L J 593 = 20 Bom. L R 365.

———S. 118 — *Doubtful evidence — Admissibility.*

It is suggested by S. 118 of the Evidence Act that in India, the rule generally is in favour of the admission of all the evidence of doubtful character though the weight to be attached will be a matter for the Court's discretion. (*Batchelor and Shah*, JJ.) GOVIND *v.* EMPEROR. 34 I.C. 976 = 17 Cr L J. 253 = 18 Bom. L.R. 266.

———S. 118 — *Criminal trial — Separate trial — Accused if can give evidence.*

When the trial of two persons accused of complicity in the same offence takes place separately each is a competent witness at the trial of the other, though the case could be different if they are tried together. (*Teunon and Richardson*, JJ.) AKHOY KUMAR MOOKERJEE *v* EMPEROR. 45 Cal. 720 = 19 Cr. L J. 663 = 22 C.W N 403 = 48 I.C. 999 = 27 C L.J. 91.

———S. 118 — *Evidence of minor.*

There is no inflexible rule that before the actual examination of a child of tender years commences, the Court must by a preliminary examination test his capacity to understand and give rational answers and must form an opinion as to the competency of the witness. The trial is not invalidated by the absence of such examination. 11 C.W.N. 51, *Diss. from.* (*Mookerjee and Beachcroft*, JJ.) NAFAR SHEIKH *v.* EMPEROR 41 Cal. 405 = 14 Cr L.J 483 = 18 C L J. 532 = 20 I C 741 = 18 C.W.N. 147.

———Ss. 118 and 120 — *Statement of acquitted person — Admissibility.*

It is not legal to admit in evidence at a subsequent trial of other persons on an identical charge, the statement of an acquitted person. (*Jenkins*, C.J., *Brett and* D. *Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. 11 I C 580 = 12 Cr. L.J. 396 = 15 C.W.N. 646.

EVIDENCE ACT (I of 1872), S. 118.

——S. 118 — *Evidence of minor—Oaths Act (X of 1873), Ss. 5 and 13—No oath administered—Admissibility.*

In spite of S. 5 of the Oaths Act, a child's evidence is not inadmissible merely on the ground that no oath was administered to it. S. 13 of the Oath's Act governs such cases. (*Ayling and Oldfield, JJ.*) GOLLA CHINNA VENKADU *v.* EMPEROR. 22 I C. 737 = 15 Cr. L.J. 161 = 38 Mad. 550.

——Ss. 118 and 120 —*Child born during wedlock proceedings—Evidence of husband as to non-access if admissible.*

Where the husband in divorce proceedings relied on the birth of a child as evidence of adultery, under Ss. 118 and 120, Evidence Act, his evidence as to non-access was admissible. A child born 11 months after the cessation of marital intercourse between its parents, is illegitimate. (*White, C.J., Ayling and Oldfield, JJ.*) JOHN HOWE *v.* CHARLOTTE HOWE. 38 Mad. 463 = (1913) M.W.N. 983 = 25 M.L.J. 594 = 21 I.C. 643 = 14 M.L.T. 447

——S. 118—*Examination of witness of tender years—Procedure.*

It is of very great importance that when the evidence of a child of tender years is adduced, the Judical Officer should, for the sake of precaution, ascertain as a preliminary measure, by meanss of a few simple questions, whether the intelligence of the child is such that (whether sworn or not) it is capable of giving testimony which is patent of credit; and it is desirable that something should, at the commencement of the record of the evidence of the witness of this character be entered to show that such a test has been in a fact made. It may turn out in the course of the examination at the trial that the test has been a fallacious one and that the evidence which the child gives is not intelligible and in such a case, it is always open to the Judicial Officer to say that he cannot accept the evidence which the child is giving. On the other hand there is no obligation imposed by law upon a Judge definitely to make on the record any endorsement of his own as to a child's capacity, and when he has clearly relied upon the evidence given, it is idle to suggest that he could have been other than thoroughly satisfied as to the capacity of the child to give intelligible testimony. (*Bucknill, J.*) PANCHU CHOUDHRY *v.* EMPEROR. 66 I C 73 = 23 Cr. L J. 233

——S. 119—*Deaf and dumb witness—Incapacity to understand.*

When a witness is so deaf and dumb as not to understand nor it is possible to make him understand the question put to him in cross-examination, he cannot be a competant witness and his evidence if taken ought to be struck out and a conviction based solely on his evidence ought to be set aside. (*Sundara Aiyar and Spencer, JJ.*) VENKATTAN *v.* EMPEROR 14 I C 653 = 13 Cr. L.J. 271 = (1912) M.W.N. 100.

EVIDENCE ACT (I of 1872), S. 122.

——S. 120—*Party as witness—Weight to be attached to evidence—Tests of.*

Per *Mookerjee*, J.—There is no inflexible rule that if a party, plaintiff or defendant, gives his testimony, he must be disbelieved, because he is a party to the suit; such a rule, if adopted, would nullify the provisions of S. 120 of the Indian Evidence Act, which provides that in all civil proceedings the parties to the suit shall be competent witnesses. When a plaintiff has deposed in support of his case, his testimony must be scrutinised in the same manner as that of any other witness; and the Court is free to attach to the evidence that amount of weight which it appears to deserve, from his demeanour, deportment under cross-examination motives to speak or hide the truth, means of knowledge, powers of memory and other tests by which the value of a statement of a witness can be ascertained if not with absolute certainty, yet with such a reasonable amount of conviction as ought to justify a man of ordinary prudence in acting upon those statements. (*Mookerjee and Buckland, JJ.*) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & CO. 49 Cal. 348 = 35 C L J 175 = 1923 C 63.

——Ss. 121, 124 and 125—*Questions mentioned in the sections—Whether barred.*

Questions mentioned in Ss. 121, 124 and 125 are not barred. The witness has simply a privilege of refusing to answer them and a Magistrate may warn the witness of his privilege. But such questions cannot be disallowed. (*Parlett, J.*) MAHOMED ALLAY *v* EMPEROR. 10 I C. 917 = 12 Cr. L J 277 = 4 Bur. L.T. 113.

——S 122—*Communications by husband to wife—Disclosure of the husband's death—Whether permissible.*

The restriction in S. 122 of the Evidence Act cannot be waived, or relaxed by the Court; so that disclosure by a widow of certain communications made to her by her husband immediately before his death, can not only be not compelled, but should not be permitted at all. (*Jenkins, C.J. and Sharfuddin, J.*) NAWAB HOWLADAR *v* EMPEROR. 23 I.C. 311 = 15 Cr. L J 303 = 40 Cal. 891.

——S. 122—*Confession to husband not admissible.*

No statement of an incriminating nature made by the appellant as to her guilt under S. 302, I.P.C. to her husband could be received in evidence. (*Broadway and Martineau, JJ.*) MT. IHSANAN *v* EMPEROR. 1923 Lah 40.

——S. 122—*Husband and wife—Communications—Privilege.*

Under S. 122 it is not legal to admit the evidence of the wife of the accused as to certain communications between her and her husband. (*Chevis and Shadi Lal, JJ.*) JOWALA SAHAI *v.* EMPEROR. 34 P.R. 1914 Cr. = 21 I.C. 661 = 16 Cr L J 184 = 226 P.L.R. 1915.

EVIDENCE ACT (I of 1872), S. 122.

———S. 122—*Confession to husband—Confession in police custody.*

A woman's confession to her husband is inadmissible in view of S. 122. An offence 'against' a person in the section does not include an offence against a son though grief may be caused by it to the father. (*Johnstone and Beaden*, JJ.) FATIMA *v.* EMPEROR.

10 P.R. (Cr.) 1914=23 I C 525=15 Cr. L.J. 613=261 P.L.R. 1914.

———S. 122—*Consent—Express.*

Before admitting evidence under S. 122 the party against whom the evidence is to be given must be asked by the Court whether he or she would consent to the evidence being given. The consent must be express. (*Scott-Smith and Agnew*, JJ.) BISHAN DAS *v.* EMPEROR.

27 P.R. (Cr.) 1913=244 P.L.R. 1913=14 Cr. L.J. 316=19 I C. 1004=44 P.W.R. (Cr.) 1913.

———S. 122—*Communication between husband and wife.*

Statements which the wife of an accused person alleges to have been made to her in respect of the offence with which he is charged, are inadmissible, without the consent of the accused or his representative in interest, under S. 122. (*Reid*, C.J. *and Beadon*, J.) MILKHI *v.* EMPEROR. **218 P.L.R 1913=14 Cr. L.J. 273=19 I C. 765=24 P.W.R. (Cr.) 1913.**

———S. 123—*Official document withheld—Court cannot direct production.*

The proper person to determine whether an official document shall be given or withheld is the Public Officer and not the Judge and the Judge cannot compel disclosures by primary or secondary evidence. (*Mookerji*, C.J. *and Chaudhuri*, J.) IRWIN *v.* REID.

48 Cal. 301=63 I.C. 467=25 C.W.N. 150.

———Ss. 123, 124 and 162—*State document—Privilege—Register of postings.*

An entry in a posting register kept by the customs department showing the sections to which officers are posted, is not a State document privileged under S. 123 or 162 of the Evidence Act. A statement made by a subordinate officer to his superior regarding the apprehension of an accused person within the hearing of various other people is a relevant fact and is admissible under S. 124 of the Act. (*Chitty and Smither*, JJ.) ROKUM ALI *v.* EMPEROR. **45 I.C. 284=19 Cr. L.J 524=22 C.W.N. 461.**

———Ss. 123, 124, 125, 155, 162 and 163—*Statement in course of departmental enquiry—Privilege—Court bound to call for statements—Cross-examination.*

Statements made by witnesses in the course of a departmental inquiry into the conduct of police officers are not privileged under Ss. 123, 124 or 125 of the Evidence Act, and can be called for at a subsequent examination of those witnesses in a Criminal Court on a charge against the police officers of taking illegal gratification. They fall within the ordinary rules of evidence as laid down in Ss. 155 and 162 of the Evidence Act. 2 Bom. L.R. 329, Foll. The Magistrate is bound to call for them under S. 162 of the Evidence Act and to allow the accused to cross-examine the witnesses under S. 155, on the statements made whether they are in favour of the accused or against them. Under S. 163 the prosecution can make use of them if they turn out to be not in favour of the defence. (*Holmwood and Sharfuddin*, JJ.) HARBANS SAHAI *v.* EMPEROR.

15 I.C. 77=13 Cr. L.J. 443=16 C.W.N. 431.

———Ss. 123 and 124—*Confidential communications—Objections to production—Finality.*

An officer's refusal to disclose a document on grounds of public policy, is final. The court cannot call for and examine the secret archives of the state in order to satisfy itself of their confidential nature. 39 M. 304 Ref. (*Stuart and Kanhaya Lal*, A.J.Cs.) LALA TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD.

47 I.C. 225=5 O L J. 294.

———Ss. 123 and 126—*Questions referred to in the sections—Whether barred.*

Questions referred to in Ss. 123 and 126 are barred and the Magistrate should disallow them. (*Parlett*, J.) MUHAMMAD ALLY *v.* EMPEROR. **10 I.C. 917=12 Cr. L.J. 277=4 Bur. L.T. 113.**

———Ss. 123 and 125—*Non-production of complaint by Court.*

Under S. 125, it is not improper to refuse to produce a complaint which is demanded merely for ascertaining the informer's name; but such refusal is privileged under that Section because the disclosure of the informer's name is contrary to S. 123 of the Evidence Act. (*Hayward and Fawcett*, A.J. Cs.) BAGUMAL WADHUMAL *v.* EMPEROR. **37 I C. 54=18 Cr. L.J. 70=10 S.L.R 134.**

———S. 124—*Privileged document—Who is to decide—Statement made to Court of Wards by proprietors—Disclosure.*

On a proper construction of S. 124, Evidence Act, it is quite clear that it is for the court to decide whether or not a particular document for which privilege is claimed is a communication made to a public officer in official confidence. If the court decides that it was so made, that it has no authority to compel the public officer to produce it, for according to the section the public officer, himself is the sole judge as to whether its disclosure would or would not be in the public interests. Where a proprietor wants his estate to be taken over for management by the Court of Wards, statements made to the Collector showing financial position, particulars of liability, etc. are privileged communications and their disclosure

EVIDENCE ACT (I of 1872), S. 124.

cannot be compelled. 32 Mad 62; 26 Cal. 201 ref. to. (*Rafique and Lindsay*, JJ.) THE COLLECTOR OF JAUNPUR *v* JAMNA PRASAD. **20 A L J 140=L R. 3 A 134=4 U P.L.R. (A) 50=1922 All. 87.**

——— **S. 124**—*Document admitted in Lower Court without objection—Effect.*

Where secondary evidence of certain documents had been admitted in the court below without any objection on the ground of privilege by the Government, it is not open to the Government to object to their admissibility in appeal under S. 124 of the Evidence Act. (*Krishnan and Ramesam*, JJ.) RATHNAMASARI *v.* SECRETARY OF STATE FOR INDIA. **44 M.L.J. 132=17 L.W. 415=32 M L.T. (H. C.) 279=1923 Mad. 332.**

——— **S. 124**—*English law—Public documents—Meaning—Communication in official confidence.*

Under English law, even the documents passing from hand to hand in a public office without any special mark of secrecy are entitled to the privilege legally recognised as to the production of public documents, the ground of privilege being that it would be detrimental to the public interest to produce it. The words 'communications in official confidence' in S. 124 import no special degree of secrecy and no pledge for its maintenance but include all matters communicated by one officer to another in the performance of duties. Where therefore the document sought to be put in, was a report by one officer to another and it was objected to, as being detrimental to public interest if produced, it is sufficient ground for the Court to refuse to compel the production thereof. The officer in charge of the record is the sole judge of the character of the document and his assertion in respect thereof, binds the Court. Case Law discussed. 32 M. 62, Dist.; 18 B. 263. Foll. (*Oldfield and Tyabji*, JJ.) NAGARAJA PILLAI *v* SECRETARY OF STATE. **26 I.C. 723=39 Mad 304.**

——— **S. 125**—*Detective employed by prosecution—Privilege.*

In criminal prosecutions, the witnesses for the crown are privileged from disclosing the channel through which they received or communicated information. But this privilege cannot be claimed by a detective who cannot refuse on grounds of public policy to answer a question as to where he was secreted. (*Mookerjee and Richardson*, JJ.) AMRITALALA *v.* EMPEROR. **42 Cal. 957=16 Cr. L J 447=21 C L J. 331=29 I.C. 513=19 C.W.N. 676.**

——— **Ss. 125 and 126** — *Instructions to counsel, etc.—Protection from disclosing—It depends on privilege where not claimed.*

Even if a person is willing to disclose the source of his information, thus waiving his privilege under S. 125, it is the duty of the Judge to exclude the evidence. If objection is taken to its admissibility on the ground of privilege, no adverse inference could be drawn,

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for to allow this, would destroy the plea of privilege. (*Woodroffe, Coxe and Chatterjee*, JJ.) D. WESTON *v.* PEARY MOHUN. **40 Cal. 898=23 I.C. 25=18 C.W.N. 185.**

——— **S. 125**—*Object and scope of.*

S. 125 rests upon public policy and it protects the name of a spy or informant, not the nature of the information and it has no application to an informant who lays a sworn information and thereby initiates criminal proceedings. This rule is clearly applicable to gambling cases. (*Pratt*, J.C. *and Fawcett*, A.J.C.) LILADHAR UMERSI *v.* EMPEROR. **29 I C. 79=16 Cr. L.J. 447=8 S.L.R. 309.**

——— **S. 126**—*Communication made to Vakil in the course of his employment.*

The knowledge which a vakil acquires through his client in a patent action as to the working of a stove is not admissible. It is immaterial that a communication is verbal, that is to say, by word of mouth or by demonstration and it is excluded by rule of professional privilege. (*Piggott and Walsh*, JJ.) GOPI LAL *v.* LAKHPAT RAI. **41 All. 126=18 I.C. 603=16 A L.J. 987.**

——— **S. 126**—*Evidence of counsel for client—Recorded but afterwards ruled—Admissibility.*

The Court cannot rule out the evidence of a counsel as inadmissible on the ground of the incompetency of the counsel to be a witness. 9 Bom L R. 1044. Ref. (*Piggott*, J.) HEARSEY *v.* MRS. EVA FORSTER. **24 I C. 166=16 Cr. L.J. 429=12 A L.J. 285.**

——— **S. 126**—*Solicitor—Privilege—Bound to attend Court.*

A Solicitor though privileged under S. 126 from producing before a Court or a Commissioner to take evidence, a letter written to him by his client, is bound to attend the Court of the Commissioner and state whether he has received such a letter without reference to its contents. (*Fletcher and Chatterjee*, JJ.) GEORGE BURCH MCNAIR *v.* CAMPBELL. **42 I.C. 532.**

——— **S. 126**—*Party and pleader on the opposite side.*

The mere fact that the suit between the parties was attempted to be compromised will not make communications regarding the claim, between the parties or between a party and the opposite side pleader, privileged. When several persons are jointly interested in the subject matter of a suit an admission by any one of these persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered, (*Sanderson*, C.J. *and Mookerjee*, JJ.) MEAJAN MATBOR *v.* ALIMUDDIN MEA. **44 Cal 1180=34 I.C. 571=25 C.L J. 42=20 C.W.N. 1217.**

EVIDENCE ACT (I of 1872), S. 126.

———S. 126—*Privilege of counsel—Limitations of.*

Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent and there is no privilege as against the Court. But if the Court calls for written instructions, it cannot use them as evidence in the cause. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHUN. **40 Cal. 898 = 23 I C 25 = 18 C W.N. 185.**

———S. 126—*Disclosure of confidential professional communication by pleader without consent of client.*

A pleader while making certain statements in the witness-box disclosed communications made to him in the course and for the purpose of his employment as Pleader in a case, with out the consent of his client. *Held*, that under S. 126 his evidence was inadmissible. The conduct of the Pleader disapproved. (*Brett and Carnduff, JJ.*) BAKAULLAH MOLLAH *v.* DEBIRUDDI MOLLAH. **14 I.C. 707 = 16 C.W.N. 742.**

———S. 126—*Privilege—Instruction to counsel.*

Instructions to counsel are privileged documents and the counsel is prohibited from disclosing what is contained in those instructions as being of a confidential nature. (10 M. 28, Ref) (*Fletcher, J.*) PEARY MOHUN DAS *v.* DONALD WESTON. **9 I.C. 609.**

———Ss. 126 and 127—*Inspection of documents—Letter by Company's agent to be laid before solicitor—Privilege.*

A letter submitted by a Company's agent to the managing agent under orders from them giving them details of a claim made, so that the same may be laid before the company's solicitor, is privileged and no inspection of the same can be granted. (*Robinson, J.*) YANG TSZE INSURANCE ASSOCIATION, LTD. *v* B. I. S.N. COMPANY, LTD. **30 I C. 974 = 8 Bur. L T 274.**

———S 126—*Communications for being put in the pleadings.*

Communications made to a pleader expressly for the purpose of being incorporated in the pleadings are not privileged. (*Pratt, J C and Crouch, A.J.C.*) BIBI SONA *v.* MIS ABDUL HUSSAIN KHAN. **16 I.C. 641 = 6 S.L R. 1.**

———Ss 129 and 131—*Witness, note from—Privilege—Whether Judge can consider it.*

A note obtained for the purpose of preparing a brief from a witness, who was subsequently examined at the trial, of the evidence he was going to give, is privileged from production and the Judge should not allow his mind to be influenced in considering the evidence that such evidence was not produced in Court. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN SINGH. **20 C.W N. 617 = 30 M L J. 624 = 1916, 1 M.W N. 358 = 33 I.C. 790 = 4 L.W. 214 (P.C.)**

EVIDENCE ACT (I of 1872), S. 132.

———S. 129—*Statements of witnesses for taking opinion of legal adviser—Privilege.*

Statements of witnesses recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether there is a good case to go to the Court are, privileged under S 129. (*Batten, A.J.C.*) DINBAI *v.* FROMROZ. **43 I.C. 71.**

———S. 130—*Third party if bound to produce—Rights of party who summoned the third person.*

A person not a party to the suit cannot be compelled to produce their title-deeds to his property but if he does not produce them the party summoning him may use a certified copy as secondary evidence. The failure to pay process fee for the issue of a warrant for the production of an original document does not deprive him of his right to use a certified copy as secondary evidence, (*Mookerjee and Carnduff, JJ.*) AMRIT CHAMAR *v* SRIDHAR PANDEY. **15 C.L.J. 7 = 13 I C. 120 = 17 C.W.N. 108.**

———Ss. 130 and 131—*Cr. P C.S. 476—C P C. O 16, R. 7—Person in Court—Order to produce document—Non-compliance.*

Where under O. 16, R. 7, C.P C., the Court called upon a person merely present in Court, to produce a document and on his stating that the document was not with him then, the Court instituted proceedings against him under S. 476, Cr. P.C. *Held*, that the Court was not justified in taking such proceedings and that before taking any such proceedings it should determine, whether the document in question was one which he could be compelled to produce. (*Mookerjee and Tupon, JJ.*) BHAGABAT PRASAD SINGH *v* EMPEROR. **14 C.L.J. 120 = 14 I.C. 794 = 12 C.L J. 450.**

———S. 132—*Privilege under — When claimed.*

The protest from a witness is not necessary for the benefit of the privilege afforded by S. 132 of the Evidence Act when he answers a question by a Court or counsel on a point relevant to the case. (*Walsh, J.*) CHATUR SINGH *v.* EMPEROR. **43 All. 92 = 2 U.P L R (All.) 355 = 58 I C 825 = 21 Cr. L.J. 875 = 18 A L J. 940.**

———S. 132—*Witness compelled to answer—Defamation.*

Where the witness was compelled to answer the question put to him by the Judge under S. 132 proceedings for defamation could not be taken against him. 16 All. 88, not Foll. 40 A. 271, Ref. (*Walsh, J.*) GANGA SAHAI *v.* EMPEROR. **54 I.C 890 = 18 A L J. 112.**

———S 132—*Privilege—Claim of.*

A witness must claim the benefit of the protection afforded by S. 132 before he makes the statement in respect of which a question is subsequently raised. (*Piggott, J.*) KALLU *v.* SITAL. **40 All. 271 = 43 I C. 823 = 19 Cr. L J. 231 = 16 A L.J. 201.**

EVIDENCE ACT (I of 1872), S. 132.

———S 132—*'Compelled to answer'—Meaning of.*

Unless a person objects to any question the answer to which is likely to criminate him, he cannot be said to have been compelled to answer within S. 132 proviso. (*Heaton*, A.C.J., *Shah and Hayward*, JJ.) EMPEROR *v.* CUNNA.
59 I.C. 324=22 Cr. L J 68=22 Bom. L.R. 1247.

———S. 132, *proviso—Thumb impression, taking of—If equivalent to answer a question.*

The taking of a thumb impression is not equivalent to asking a question and receiving an answer and may be proved against the person in any criminal proceeding and the proviso to S. 132 does not apply where no objection is taken to the thumb impression being taken even supposing that taking thumb impression is equivalent to an answer. 3 M. 271; 21 C. 393, Foll. (*Stephen and Chatterjee*, JJ.) TUNOO MAI *v* EMPEROR.
16 C.W.N. 803=15 C.L.J. 399=13 I.C. 925=13 Cr. L J. 173=39 Cal. 348.

———S. 132—*Co-accused in another trial—If can be cited as witness.*

A person who is tried for an offence under S. 3 of the Gambling Act has every right to cite as his witness another person who is a co-accused with him for an offence under S. 4 in a separate trial. The co-accused's position is sufficiently protected by S 132 Evidence Act, (*Zafar Ali*, J.) RAJA RAM *v* EMPEROR.
78 I.C. 521=24 Cr. L J. 633=5 Lah. L.J. 429.

———S. 132—*Protection—When can be claimed.*

A person making a defamatory statement as a party or as a witness in a judicial proceeding, which is *prima facie* defamatory, is liable to be charged under S. 500 I.P.C., irrespective of the liability for perjury. Such person can be protected if he pleads and succeeds in applying any of the exceptions mentioned in S. 499. (*Arthur Reid, Kt.* C.J.) PHUNDI RAM *v.* EMPEROR. **10 I.C. 682=12 Cr L J 193=7 P.W.R. 1911 Cr.**

———S. 132, *proviso—Reconciliation of statements.*

A sanction to prosecute for perjury should not be given on the basis of two contraditory statements where the two statements are reconcileable and every possible presumption must be in favour of such reconciliation. 7 A. 44 Foll. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* TIKAM LAKHI **24 I C 576=15 Cr. L.J. 488=7 S L R 108.**

———S. 132—*Reconciliation of statements.*

Where a charge for perjury is based on two contradictory statements every possible presumption in favour of their reconciliation should be made. (*Pratt*, J.C. *and Hayward*, A.J.C.) IMAM BUX *v* EMPEROR
23 I.C. 747=15 Cr. L J. 379=7 S.L.R 96.

EVIDENCE ACT (I of 1872), S. 133—Accomplice, meaning.

———S. 132, *proviso—English doctrine of absolute privilege if applies in India.*

The English doctrine of absolute privilege in cases of defamation does not apply in India. (*Pratt*, J.C.) MC. GILL *v* BRYNE.
13 Cr. L.J. 25=13 I.C. 217=5 S.L.R. 133.

———S. 133.

ACCOMPLICE AND DETECTIVE—DISTINCTION.
ACCOMPLICE, MEANING.
CONVICTION ON UNCORROBORATED TESTIMONY.
CORROBORATION, WHAT IS.
RETRACTED CONFESSION.
VALUE OF ACCOMPLICE'S EVIDENCE.
VALUE OF APPROVER'S EVIDENCE.

See also EVIDENCE ACT, S. 114, ILLN. (*b*).

Accomplice and Detective—Distinction.

———S. 133—*Accomplice and detective—Distinction.*

The detectives and accomplices are distinguished clearly when a conspiracy contains persons of both the characters. The former enter with a design of detecting or betraying it, while the latter do concur fully with other accomplices till they are not alarmed or they turn upon their associates and expose them. In the case of those corroboration equal to that of others is necessary. (*Harrington, Mookerjee and Caspersz*, JJ.) PULIN BEHARY *v.* EMPEROR. **13 Cr. L.J. 609=16 I C 257=15 C.L J. 517=16 C.W.N. 1105.**

Accomplice, meaning.

———S. 133—*Accomplice—Meaning.*

One who deposes that he only helped the accused in disposing of the body of the deceased after he was killed by the accused is no accomplice. (*Le Rossignol and Zafar Ali*, JJ.) JEHANA *v.* EMPEROR. **24 Cr. L J. 618=1923 Lah. 345.**

———S. 133—*Accomplice, meaning—Bribery of public servant.*

Persons taking part in negotiations for bribe cannot be said to be independent witnesses; and their evidence is not free from doubt, but persons merely present are not accomplices. (*Bradway*, J.) KHADAM ALI *v* EMPEROR.
20 Cr. L.J 268=50 I C. 18=18 P.W.R. (Cr.) 1919.

———S. 133—*Accomplice, meaning.*

An accomplice is a witness and not an accused person. (*Reid*, C.J. *and Johnstone*, J.) EMPEROR *v.* UMADA. **9 P R Cr) 1911=22 P W.R (Cr.) 1911=10 I.C. 310=12 Cr L J. 267=166 P.L.R. 1911.**

———S. 133—*Accomplice—Meaning.*

Per *Abdur Rahim*, J.—Persons who actually pay bribes or co-operate therein, are accomplices and their evidence should not be accepted

EVIDENCE ACT (I of 1872), S. 133—Accomplice, meaning.

without independent corroboration. 33 C. 64 Cr. ; 27 M. 271, Expl. ; 27 C. 144, Con. (Per *Ayling*, J.) Such persons are only technically accomplices and the suspicion to be thrown on their evidence may be very slight. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO (1911) 1 M.W.N. 327 = 21 M L J. 283 = 12 Cr. L.J. 150 = 9 I.C. 897 = 10 M L.T. 84.

——S. 133—*'Accomplice,' meaning.*

A suspected participator in the crime, appearing as a prosecution witness is on the same basis as an accomplice and a conviction cannot be based upon his uncorroborated testimony. (*Rafique and Pigoott*, A.J.Cs.) RUSTAM SINGH *v.* EMPEROR 24 I.C. 146 = 15 Cr L J. 440 = 1 O.L.J 95.

Conviction on uncorroborated evidence.

——S 133—*Conviction on uncorroborated testimony—Practice.*

A conviction based on the evidence of an accomplice is not bad but in established practice, it is necesary that such evidence should be corroborated by some untainted evidence in material particulars. (*Jenkins*, C J. *and Sharfuddin*, JJ) MUNESSAR AHIR *v* EMPEROR. 24 I.C. 174 = 15 Cr. L.J 438 = 18 C.W.N. 550.

——S 133—*Conviction on uncorroborated testimony—Practice—Approver's evidence.*

The testimony of an approver must be corraborated not only as to the crime, but also as to the identity of each accused person and that the corroboration must proceed from an untainted source This is not a technical rule, but is founded on long judicial experience. (*Jenkins*, C.J., *Brett and Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. 15 C.W N. 593 = 10 I C. 582 = 12 Cr. L J. 286 = 38 Cal. 559.

——S. 133—*Conviction on uncorroborated evidence of accomplices—Practice.*

A conviction based merely on the uncorroborated testimony of an accomplice is not illegal. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO. (1911) 1 M.W N. 327 = 21 M.L.J. 283 = 12 Cr. L.J. 150 = 9 I.C. 897 = 10 M L T. 84.

——S. 133—*Conviction on uncorroborated testimony.*

A conviction based on the evidence of an accomplice uncorroborated by the evidence of other witnesses is not illegal. Such evidence must be examined, like the evidence of any other witness, to see whether it is credible or not, the fact that the witness is an accomplice being of course a strong reason for disbelieving him. It cannot be rejected merely because it is the evidence of an accomplice uncorroborated by other witnesses, but, if believed after proper examination, must be acted upon. (*Hallifax and Macnair*, A.J.Cs.) GOVINDA *v.* KING-EMPEROR. 69 I.C. 257 = 23 Cr. L J 673 = 17 N.L.R. 113.

EVIDENCE ACT (I of 1872), S. 133—Corroboration, what is.

——S. 133—*Conviction on uncorroborated testimony.*

An accused can be convicted only when the Judge is satisfied that the evidence of the accomplices was corroborated in some material and satisfactory manner. (*Das and Bucknill*, JJ.) DHANNU BELDAR *v.* KING EMPEROR. 2 Pat. L T. 737.

——S. 133—*Conviction on uncorroborated evidence—Practice.*

Conviction based on the uncorroborated evidence of an accomplice is not illegal although according to illustration (*b*) to S. 114 the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars provided the Court carefully tests the truth of evidence, searches for his motives, and subjects his evidence to the most rigid tests. (*Charles Fox*, C J. *Hartnoll and Twomey*, JJ.) NGA PO CHIT *v.* EMPEROR. 6 L.B.R. 4 = 9 I.C 778 = 12 Cr. L J. 132 = 4 Bur. L T. 50.

Corroboration, what is.

——S. 133—*Corroboration—What is—Co-accused, retracted confession of.*

An approver's evidence supported by the retracted confession of a co-accused behind the back of the accused, is not sufficient to convict the accused. Such a retracted confession is not a corroboration of a high value. (*Tudball*, J.) DEBI DAYAL *v.* EMPEROR. 18 I.C. 672 = 14 Cr. L J. 112 = 11 A L.J. 73.

——S. 133—*Corroboration—What is.*

It is unsafe to rely upon the uncorroborated testimony of the approver; the corroboration must be of the statement connecting the accused with the offence. (*Chamier*, J.C. *and Piggott*, A.J.C.) MAKBUL AHMED *v* EMPEROR. 12 I.C. 513 = 12 Cr. L J. 537.

——S 133—*Corroboration—What is.*

Some dacoits raided a person's house. But before their purpose was effected, the person's neighbours drove them off. One of them was, however, captured on the spot. He confessed to a private person their purpose and disclosed the names of some of his participants; on that information others were captured; and one of them turned an informer. The first accused confessed before a first class Magistrate just after the day of occurrence but retracted it afterwards. *Held*, that in all cases depending upon an informer's evidence, the degree of support required for the evidence depends in each case upon the individual's credit. That the confession of the first accused did amply corroborate the informer's evidence and the convictions of the dacoits were legal. (*Harington and Brett*, JJ.) LALAN MULLICK *v.* EMPEROR. 15 I.C. 987 = 13 Cr. L.J. 571 = 16 C.W.N. 609.

EVIDENCE ACT (I of 1872), S. 133—Corroboration, what is.

———S 133—*Corroboration, what is—Corroboration by an approver.*

There is nothing in S. 133 to suggest that the statement of one approver cannot be regarded as corroborating that made by another approver. No doubt if it could be shown that the approvers had ample opportunity of consultation, this corroborative value would be greatly diminished. (*Lumsden*, J.) EMPEROR *v.* DARYA SINGH.

1923 Lah 666.

———S. 133—*Corroboration, what is.*

Where the only evidence against an accused person is that he has produced stolen property out of a place which is not in his own possession, that evidence is not sufficient to support a conviction for theft or for receiving stolen property. But the production of the property is clear evidence against the person producing it and is material corroboration of the evidence of an accomplice who has deposed that that person joined him in committing a dacoity or a burglary or a theft. The discovery of stolen property out of a house jointly occupied by himself and his uncle, is corroboration of the approver's story against the accused. Such production might not be sufficient evidence of itself to support a conviction for being dishonestly in possession of stolen property but it certainly is evidence against the persons producing it. The value of the evidence is another matter. (*Scott Smith*, J.) KHUSHAL SINGH *v.* EMPEROR.

23 Cr. L J. 234=1923 Lah. 336.

———S. 133—*Corroboration, what is—Evidence of approver—Criminal P C. Ss.* 395 *and* 396.

The approver referred to a story by one A who invited him along with appellants to join in the dacoity; the incident of the story told by the approver turned out to be true on police inquiry. Appellants were seen with the approver at Sukho and arrested in his company at Mandra. The possession of the three tickets all from Chakala to Mandra and bearing consecutive numbers was strong corroboration of the approver's story as to the appellants having accompanied him to the scene of the occurrence. *Held*, the guilt of the appellants had been established beyond reasonable doubt by the evidence of the approver which had been amply corroborated as against them. (*Broadway and Martineau*, JJ.) HAKIM *v.* EMPEROR.

1923 Lah. 153.

———S. 133—*Corroboration, what is.*

Tainted evidence cannot be useful for corroboration of tainted evidence. (*Shadi Lal and Abdul Qadir*, JJ.) AHMAD MIR *v.* EMPEROR. 23 Cr. L J 597=68 I.C 821=4 U.P.L R. (L) 110.

———S. 133—*Corroboration, what is.*

An approver may be telling the truth and it is quite probable that he himself was concerned in the murder but his statement as to who his accomplices were, must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered by the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation, must be regarded with doubt and these witnesses may possibly be hiding themselves at the cost of innocent men. (*Chevis*, C.J. *and Le Rossignal*, J.) FATTA *v.* EMPEROR.

2 Lah. L J. 296=67 I.C. 828=18 P.W.R. Cr. 1922.

EVIDENCE ACT (I of 1872), S. 133—Retracted confession.

———S. 133—*Corroboration, what is.*

Mention of a person in confessions of co-accused obtained seriatim is not sufficient corroboration of statement. (*Chevis*, J.) LALA *v.* EMPEROR. 65 I.C. 622=23 Cr. L.J. 158=8 P.W.R. 1922 Cr.

———S. 133—*Corroboration, what is—Evidence as against a third accused.*

Confession of one accused cannot be said to be corroborated by the confession of another as against a third accused who has not confessed at all. But between the first two, the confession of one may be said to be corroborated by the confession of the second and *vice versa*. 38 Bom. 156, Dist. (*Scott-Smith and Lindsay*, JJ.) GANGA RAM *v.* EMPEROR. 60 I.C. 786=22 Cr. L J. 290.

———Ss. 133, 144, Illn. (b)—*Corroboration—What is—Approver's evidence.*

An accused should not be be convicted on the statement of an approver unless such testimony is strongly corroborated and the corroboration distinctly implicates the accused with crime committed. Scanty corroboration is not sufficient. (*Johnstone*, C J. *and Shah Din*, J.) NAND SINGH *v.* EMPEROR.

40 I.C. 696= 18 Cr. L.J. 696=9 P.W R. Cr. 1917.

———S. 133—'*Corroboration*'—*What is.*

Per *Abdur Rahim*, J.—The evidence of one accomplice is not sufficient corroboration of the evidence of other accomplices nor are previous statements made by the same person sufficient. (*Sankaran Nair*, *Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO.

(1911) 1 M.W.N. 327=21 M.L J. 283=12 Cr. L.J. 150=9 I.C. 897=10 M.L.T. 84.

Retracted Confession.

———S. 133—*Retracted confession—Value of, as evidence.*

It cannot be laid down as an inflexible rule that a confession made by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a-

EVIDENCE ACT (I of 1872), S. 133—Retracted confession.

confession which has been retracted unless after a consideration of the whole of the evidence in the case the Court is in a position to come to the unhesitating conclusion that the confession is true that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. (*Newbould and Pearson, JJ.*) EMPEROR *v.* BISESWAR DEY

26 C.W.N. 1010=24 Cr. L J. 145=1923 Cal. 217.

———S. 133—*Retracted confession — Statement of approver—Corroboration.*

Retracted confession of an accused may be sufficient corroboration of the approver's story as against himself but not against a co-accused. (*Rattigan, C.J. and Martineau, J.*) PALLIA *v.* EMPEROR. **20 Cr. L J. 188=49 I.C. 604=12 P W.R (Cr.) 1919**

———S. 133—*Retracted confession—If admissible.*

A retracted statement of an approver, is admissible as evidence against an accused person. (*Odgers, J.*) VEERABHADRA *v.* EMPEROR. **61 I.C. 528=22 Cr. L J 400=12 L W. 385.**

———S 133—*Retracted confession—Value of, against co accused.*

Whatever value may be attached to the retracted confession of an accused as against himself, its value as against a co-accused is very weak. (*Jwala Prasad and Sultan Ahmad, JJ.*) MAKSUD ALI *v* EMPEROR.

60 I C 56=22 Cr. L J 200=2 Pat. L.T. 773=3 U.P.L.R. (Pat.) 18.

———S. 133—*Retracted confession.*

The confession of an accomplice should be subjected to the most anxious scrutiny in so far as it incriminates others, and received with caution as it is not sifted by cross-examination. Yet if after all that caution, a Judge believes it to be true, there is nothing in law to prevent the conviction of an accused on the uncorroborated and retracted confession of an accomplice. Conviction was set aside where the retracted confession of a co-accused was not convincing. (*Hartnoll and Young, JJ.*) NAG TUN, E. *v* EMPEROR. **19 I C 179=14 Cr. L.J. 179=6 Bur. L.T. 47.**

——— S 133—*Retracted confession.*

The statement of an accomplice before the committing Magistrate, though retracted in the Sessions Court can be treated as substantial evidence on the same footing as any other evidence. 28 A. 683, Ref. But this evidence must be treated with caution in so far as it implicates a particular accused or assigns a particular part in the crime. (*Fawcett, J.C. and Couch, A J.C.*) PUNHU *v* EMPEROR **16 Cr. L.J. 283=27 I C. 905=8 S L.R. 203.**

EVIDENCE ACT (I of 1872), S. 133—Value of accomplice's evidence.

Value of Accomplice's Evidence.

———S 133—*Value of accomplice's evidence.*

An accomplice is a suspect witness whose evidence must be received with great caution. While it is essential that accused persons should be protected from conviction based on the mere evidence of an untrustworthy accomplice, it is important that the requirements of the Legislature in this respect should not be exaggerated by the Court as to offer a practical guarantee of immunity to persons guilty of grave offences which are in their very nature difficult of detection. When all legal precautions are taken and all relevant considerations are duly weighed, the Judge is convinced that the accomplice's evidence is true, it is his duty to say so and give effect to his mental conviction. (*Batchelor and Shah, JJ.*) GOBIND *v.* EMPEROR. **17 Cr. L J 256=34 I.C. 976=18 Bom. L.R. 266.**

———Ss 133 and 114, Illn. (6)—*Value of accomplice's evidence.*

Where one R paid Rs. 20 to a *Jamadar* of a District Judge on his representation to R that by paying this amount to the clerk of the Court, R would be appointed to a certain post and made this payment in the presence of two persons, one a cousin of his and another a pleader come there on professional business. *Held*, that the *Jamadar* was guilty of an offence under S. 161, I.P.C. and that R and his cousin are accomplices but that the fact of their being accomplices did not lessen the value of their evidence as there was no proof of any *animus* on their part against the *Jamadar* and that the pleader could not be said to be an accomplice as he did not co-operate in the offer of the bribe nor was he instrumental in the negotiations for the payment. (*Johnstone and Broadway, JJ.*) GHULAM MUHAMMAD *v* EMPEROR **39 I.C. 680=18 Cr. L J. 556=9 P.R (Cr.) 1917.**

———S 133—*Value of accomplice's evidence—Confession of co-accused and testimony of accomplice—Probative value.*

The probative value of the evidence of an accomplice is practically the same as the confession of a co-accused. 38 B. 156 Foll. A conviction based on the evidence of an accomplice or the confession of a co accused is not illegal though it is not safe to act on such testimony unless corroborated in material particulars. (*Wallis and Sadasiva Aiyar, JJ.*) NARAYANA AIYAR *v* EMPEROR. **24 I C. 153=15 Cr L J. 417=(1914) M.W N. 363.**

———S. 133—*Value of accomplice's evidence.*

Where the complicity of a person is due solely to coercion and his evidence cannot be ascribed to any desire to escape legal consequences, the degree of discredit attaching to his evidence is practically negligible. (*Tyler and Napier, JJ.*) KILLIKYATARA BOMMA *v* EMPEROR. **19 I.C. 207=14 Cr L J 207=(1912) M.W.N. 1108.**

EVIDENCE ACT (I of 1872), S. 133—Value of accomplice's evidence.

——S 133—*Value of accomplice's evidence—Corroboration—Practice.*

Under S. 133, Evidence Act, the evidence of an accomplice by itself is enough for a conviction, but it is a rule of practice founded on experience that in every case where an accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise this presumption is an error of law, but in each case the weight to be attached must depend on the particular circumstances. (*Mullick and Thornhill*, JJ.) MADAN GURU *v.* EMPEROR. 73 I.C. 963=24 Cr. L J. 723= 4 Pat. L T. 381.

Value of Approver's Evidence.

——S 133—*Value of approver's evidence.*

The evidence of an approver, if believed, is sufficient foundation whereon to repose a conviction, but in practice, the Court *ex majori cautela* insists upon corroboration of the approvers' statements in material particulars. (*Le-Rossignol*, J.) TOTA SINGH *v.* EMPEROR. 69 I C 462=23 Cr. L J 735.

——S 133—*Value of approver's evidence—What is corroboration.*

An approver may be telling the truth and it is quite probable that he himself had a hand in the murder but his statement as to who his accomplices were must be corroborated by realiable evidence before it can form the basis of a conviction. The corroboration offered in this case was the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation. The delay may be due to their reluctance to implicate the accused after they had promised no to give information, but it was obvious that statements obtained after such a long delay must be regarded with suspicion; and these witnesses may possibly be scheming themselves at the expense of innocent men. Even if these witnesses bear no enmity to the appellants and are related to them, the long delay in making their statements makes their evidence liable to grave suspicion. (*Chevis*, C J, *and Le-Rossignal*, J.) FATTA *v.* EMPEROR. 23 Cr. L.J. 476=67 I C 828 (2)= 2 Lah. L.J. 296.

——S. 133—*Value of approver's evidence*

The statement of an approver, veracious though it may appear to be, and though the truth of a large part of it be established beyond all doubt, nevertheless must be corroborated. (*Jones*, J.) RAM SINGH *v.* EMPEROR. 7 P L R 1916 (Cr.)=34 I.C. 993= 17 Cr. L J 273=38 P.W.R. 1916 (Cr.).

——S. 133—*Value of approver's evidence.*

Evidence of approver may, in exceptional cases and for reasons stated, be admitted though uncorroborated. (*Rattigan and Chevis*, JJ.) GHULAM *v* EMPEROR. 17 Cr L J. 220= 34 I.C. 332=31 P.W.R. (Cr.) 1916.

EVIDENCE ACT (I of 1872), S. 188.

——S. 133—*Value of approver's evidence—Corroboration.*

There should be direct and material corroboration of the statement of an approver who is of very bad character. (*Rattigan*, J.) WARYAM SINGH *v.* EMPEROR. 32 I C. 843=17 Cr. L J. 107= 2 P.W.R (Cr.) 1916.

——S. 133—*Value of approver's evidence—Corroboration in material particulars required.*

The criterion must always be kept that, an approver's evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. (*Robertson and Rattigan*, JJ.) LAD KHAN *v.* EMPEROR. 19 P.W.R. (Cr.) 1912=13 Cr. L J 182= 13 I C. 988=17 P L.R. 1912.

——S. 133—*Value of approver's evidence.*

The evidence of an approver should not be believed without material corroboration and in order to see whether there is such corroboration the Court should scrutinise and marshal out very carefully the facts. (*Williams*, J.) MANA *v.* EMPEROR 9 I C. 232= 12 Cr. L J. 35=3 P.W.R. (Cr.) 1911.

——S. 133—*Value of approver's evidence.*

Where the evidence on a charge of murder consists of a confession by one accused against another the accused excepting himself, and the evidence of an approver is to the effect that he saw the deceased alive with the accused just before the murder; neither the confession nor the corroboration should be acted upon. (*Benson and Wallis*, JJ.) MURE VENKATA *v.* IRA-GAKKAGIRI NAGI REDDI. 12 I.C. 650=13 Cr. L.J. 562= (1911) 2 M.W.N. 375.

——S. 136—*Question of—Onus in appeal—Witness disbelieved on inadmissible evidence—Effect.*

In ordinary cases the question of onus is not of great importance in appeal where both parties have produced the whole of their evidence upon an issue. But where witnesses have been disbelieved on inadmissible evidence, *e.g.*, certified copies of judgments put in without examining the witness under S. 136, the effect is that the decision is vitiated. (*Campbell*, J.) SOHAN SINGH *v.* SANTA SINGH. 1923 Lah. 491.

——S. 136—*Evidence — Disallowance of questions in cross-examination.*

Where in cross-examining a witness for the prosecution, questions are disallowed by the Court on the ground of irrelevancy or other grounds, the deposition should show what the questions are and the reason for disallowing them. (*Mullick and Sultan Ahmed*, JJ.) RAMESHWAR DUSADH *v* EMPEROR. 55 I C. 693=21 Cr L J. 321=1 Pat. L.T. 632.

——S. 138—*Cross-examination— Adverse party.*

The right of cross-examination belongs to an adverse party, and parties who do not hold

EVIDENCE ACT (I of 1872), S. 138.

that position, should not be allowed to intervene and take part in cross-examination and such portions should be expunged from the record. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) JARWA BAI *v.* PITAMBAR NILAMBAR SHAH. **36 I.C. 689 = 24 C.L.J. 149.**

——S. 138—*Right in cross-examination to demand repetition of evidence given in chief examination—Rule, if any.*

No hard and fast rule can be laid down as to the right of a counsel to demand in cross-examination the repetition of the whole story told in the examination-in-chief. (*Rattigan and Chevis*, JJ.) LAKHA SINGH *v.* EMPEROR. **89 P.L.R. 1914 = 15 Cr. L.J. 148 = 22 I.C. 724 = 30 P.W.R. (Cr.) 1914.**

——S. 138—*Opportunity for cross-examination must be given.*

It is certainly implied by S. 138 of the Evidence Act that a party must have had an opportunity to cross-examine and does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross examination is sufficient compliance with the requirements of the law. (*Jwala Prasad and Coutts*, JJ.) MOTI SINGH *v.* DHANUKDHARI SINGH. **24 Cr. L.J. 595 = (1923) Pat. 53.**

——S. 138—*Cross-examination — Suit against several defts. — Some supporting plaintiff—Procedure.*

Where some of the defendants support the plaintiff's case and others oppose it, those who support the plaintiff's case should be ordered to cross-examine the plaintiff's witness first, if they desire and to call their evidence and address the Court before the defendants who oppose the plaintiff's case do so. (*Miller*, C.J. *and Mullick*, J.) MOTIRAM MARWARI *v.* LALIT MOHAN GHOSH. **5 Pat. L.J. 545 = 58 I.C. 238 = 1 Pat. L.T. 676.**

——S. 138—*Cross examination—Extent.*

The right of cross-examination endowed by S. 138 is not restricted by the fact that there are police papers which are not referred to by the prosecution; and the cross-examination can be made on all matters allowed by the Evidence Act. The cross-examination is not limited to matters raised in evidence elsewhere. (*Parlett*, J.) MAHOMED ALLAY *v.* EMPEROR. **10 I.C. 917 = 12 Cr. L.J. 277 = 4 Bur. L.T. 113.**

——S. 142—*Leading question,*

A leading question to the prosecution witness by the prosecution cannot be allowed nor can the reply be used. (*Coutts and Adami*, JJ.) NIRU BHAGAT *v.* KING-EMPEROR. **1 P. 630 = 4 P.L.T. 76 = 24 Cr. L.J. 91 = 1922 P. 532.**

——Ss. 143 and 154—*Right of accused to ask leading questions—Duty of Court.*

In the course of cross-examination by the defence for the purpose of eliciting facts in their favour from the prosecution witnesses,

EVIDENCE ACT (I of 1872), S. 146.

though these facts are irrelevant, the defence are entitled under S. 143, to ask leading questions. The Courts may, in its discretion under S. 154, permit the prosecution to cross-examine a witness even though he had been originally called by them with regard to the matters elicited by the defence. (*Mookerjee and Richardson*, JJ.) AMRITALALA *v.* EMPEROR. **42 Cal. 957 = 16 Cr. L.J. 497 = 21 C.L.J. 331 = 29 I.C. 513 = 19 C.W.N. 676.**

——S. 143—*Leading questions—Cannot be asked in Examination-in-chief.*

The Public Prosecutor will not be allowed in examination in-chief to put leading questions such as can properly be put in cross-examination of a hostile witness. (*Das and Bucknill* JJ.) DHANU BELDAR *v.* KING EMPEROR. **2 Pat. L.T. 757.**

——S. 143—*Leading question disallowed—Counsel to ask Judge to record, if to be made ground of appeal.*

If a Judge disallows a question, the pleader should have the question and order disallowing it recorded, as such a refusal is illegal. (*Twomey and Parlett* JJ.) DEIYA *v.* EMPEROR. **9 Bur. L.T. 133 = 17 Cr. L.J. 500 = 36 I.C. 468.**

——S. 145—*Documents tendered after evidence—Value of.*

A witness cannot be disbelieved without his attention being drawn to the documents inconsistent with his deposition even though the documents were produced after his examination. In such a case he should be recalled for further cross-examination. (*Viscount Haldane*). NABA KUMAR DAS *v.* RUDRA NARAYAN JANA. **45 M.L.J. 438 = 33 M.L.T. 309 = (1923) M.W.N. 622 = 1923 P.C. 93 (P.C.).**

——S. 145—*Witness not shown, contradictory writing.*

A witness was disbelieved though he was not shown the documents to contradict his story, where after the documents were produced, he was not recalled. (*Lord Phillimore*). MERLA VENKANNA *v.* MERLA AGASTHIAN. **27 C.W.N. 725 = 32 M.L.T. 86 P.C.) = 1923 P.C. 31.**

——S. 145—*Absence of note about directing attention.*

Where the purpose of the production of the document must have been well understood by the witness and from the record of his deposition it was manifest that after being shown the document, he was directly asked whether it was not a fact that he was not at a particular place on the alleged date as was clear from the document and where on re-examination no attempt was made to elicit any explanation. *Held*, the witness was properly contradicted. (*Sir Lawrence Jenkins*) BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBEYA. **44 M.L.J. 699 = 27 C.W.N. 797 = 1923 P.C. 409.**

EVIDENCE ACT (I of 1872), S. 145.

———S 145—*Oral evidence—Contradiction of, by prior statements—Witness to be specifically asked to explain.*

A Court is precluded both on general principles and by S. 145 from treating the oral testimony of witnesses as rebutted, by his previous statements contained in documents filed in the case, unless those statements have been put to the witness in cross-examination. (*Lord Shaw.*) BAL GHANGADHAR TILAK *v.* SHRI SRINIVASA PANDIT. **39 Bom. 441 = 13 A.L.J. 670 = 19 C.W.N. 729 = 17 Bom L R. 527 = 22 C.L J. 1 = 29 M L J 34 = 18 M.L T. 1 = (1915) M W.N 484 = 2 L.W 611 = 29 I.C. 639 = 42 I.A, 135 (P.C.)**

———S. 145—*Attention of complainant to be drawn to statements used in cross-examination to contradict.*

If the previous deposition of a complainant made before the Magistrate was admitted as a whole in order to contradict him during his cross-examination, it is not consistent with the principle, to admit the evidence in the manner without first drawing the attention of the witness especially to every point used to contradict him. (*Beaman and Macleod*, JJ.) LAKSHMANA TOTARAM *v.* EMPEROR. **31 I.C. 384 = 16 Cr. L J. 754 = 17 Bom. L.R. 590.**

———S. 145—*Witness—Prior statements.*

Prior statements of witnesses not put to them in the witness box are inadmissible in evidence. Previous statements, unless used to contradict or discount the evidence of a witness given in a suit, cannot be legtimately used and even then the particular matter or point must be placed before the witness, as one for explanation in view of its discrepancy with the evidence tendered. (*Mookerjee and Beachcroft*, JJ.) UPENDRA NATH NAG *v* BHUPENDRA NATH NAG. **32 I.C 267 = 21 C W N. 280.**

———S. 145—*Previous statement—Value.*

Previous statements can be used only for the purposes of cross-examining a witness. They cannot be admitted as evidence against an accused. (*Kensington and Johnstone*, JJ.) RAKHIA *v.* EMPEROR **157 P L R. 1911 = 12 Cr. L J 214 = 10 I C 119 = 56 P.W.R. (Cr.) 1911.**

———S. 145—*Discrepancy in prior deposition—Duty of Court.*

Where a Court finds that there are discrepancies between a witness's statement made before it and the one previously made by him before another Court, it should ask him to explain them. (*Kanhaiya Lal*, A.J C.) SURAJ BAKSH *v.* SUKHDEI. **32 I C 291 = 20 L.J 502**

———Ss. 145 and 155—*Statements under S. 164, Cr. P.C.—Inadmissible against accused—Use of, to contradict statements subsequently made.*

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Statements taken under S. 164, Cr. P.C. and not covered by S. 288 are inadmissible against the accused. But they can be used for the purpose of contradicting the statements subsequently made in Court by the persons making the former statements. (*Lindsay*, J.C.) PUTTU *v.* EMPEROR. **10 L.J. 753 = 27 I C. 196 = 16 Cr. L J. 132 = 17 O.C. 363.**

———Ss 145 and 155—(3)—*Examination of witness out of Court—Whether intended to bind down witness to certain evidence.*

Advocates and Pleaders may examine witnesses in their chambers or elsewhere before such witnesses appear in Court if they think fit. Such examination is not made with intent to fix witnesses down to certain evidence, but is made to ascertain what they know and to enable the case to be conducted properly. (*Hartnoll*, J.) JORDON *v.* EMPEROR. **14 I.C. 763 = 13 Cr. L J. 299 = 5 Bur. L T. 38.**

———S. 146—*Cross-examination as to credit—Oral evidence—Credibility of witness.*

Cross-examination as to credit is necessarily irrelevant to any issue in the action; its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for or against the issue is untrustworthy; it is most relevant in a case where everything depends on the Judge's belief or disbelief in the witness's story. (*Sir George Farewell.*) BOMBAY COTTON MANUFACTURING COY. *v.* MOTILAL. **39 Bom. 326 = 19 C W N. 617 = 17 M.L T. 408 = 28 M.L J 593 = 21 C L J 528 = 17 Bom. L R. 455 = 2 L.W. 521 = (1915) M W.N. 788 = 29 I.C. 229 = 42 I.A. 110 (P.C.)**

———Ss. 145 and 148 to 152—*Scandalous question—Relevancy.*

During the examination of one of the defendants by plaintiff a question was put whether she was made pregnant by a certain person. The question was objected to but the plaintiff contended that it was relevant, his case being that the witness did not inherit the property by reason of her unchastity during the lifetime of her husband. If the plaintiff's case was that she did not inherit the property of her husband by reason of her unchastiity during his lifetime, then the question would be relevant. If, however, it was asked for impeaching her credit as a witness, the Court will have to consider the provisions of Ss. 146 and 148 to 152 of the Evidence Act. (*Chatterjee and Pearson*, JJ.) SUBALA DASI *v.* INDRA KUMAR HAZZRA. **1923 Cal. 315 (2).**

———Ss. 146, 148 and 152—*Impeaching credit of witness—Indecent or scandalous questions—Power of Court to disallow.*

A certain lady from whom deft, alleged that he derived title was examined on commission and the plaintiff's pleader cross-examined her on the point whether she had not been kept by a stranger. The object of the cross-examination was to show that the lady did not inherit

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her husband's property on account of her unchastity. The Court disallowed the question without recording any reason. *Held*, that the Court below ought to consider, whether having regard to the plaint, the petition, and the issues framed, the question as it stood was relevant, and if not whether the question was allowable having regard to Ss. 146, 148 and 152 of the Evidence Act. (*Prideaux*, A J.C.) PANDU *v.* ABDUL KADAR. **5 N L J 138 = 1922 Nag. 109.**

——— **S. 149** — *Cross-examination—Instruction.*

Counsel for prisoner should not state as existing facts, matters which he had been told in his instructions on the authority of the prisoner but which he does not propose to prove by evidence, or suggest in cross-examination of prosecution witnesses. (*Jenkins*, C.J., *Mookerjee and Holmwood*, JJ.) EMPEROR *v.* NAGENDRA NATH SEN GUPTA **21 C L J 396 = 30 I C 128 = 16 Cr L J 876 = 19 C.W.N. 923.**

——— **S. 149** — *Legal practitioner—Cross examination of witness—Privilege—Extent of—Instructions—Disclosure of.*

Counsel are not justified in making serious charges of fraud and crime unless they are personally satisfied of the existence of reasonable grounds for putting them forward. It is not sufficient to plead instructions. A Court can ask counsel as to whether they make a charge in cross-examination on instructions and if so to disclose them to the Court. They could not be used as evidence in the cause but might be used in any disciplinary proceedings taken against counsel. (*Woodroffe, Coxe and Chatterjee*, JJ.) D WESTON *v.* PEARY MOHUN DAS. **40 Cal. 898 = 23 I.C 25 = 18 C.W.N. 185.**

——— **S. 150** — *Question affecting third party.*

Where a question in cross-examination reflects not on witness but on a third party, S. 150 which must be referred back to S. 146, can have no application (*Fletcher*, J.) PEARY MOHUN DAS *v.* DONALD WESTON. **9 I.C. 503.**

——— **S. 151** — *Indecent or scandalous question—Latitude to counsel.*

Indecent and scandalous questions may be put either to shake the credit of a witness or as relating to facts in issue, or in order to determine whether or not a fact in issue existed. If they are put to shake the credit of a witness the Court has complete control over them to forbid such questions if necessary. But if they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts inissue existed, the Court cannot forbid such questions, though they may be indecent or scandalous. Advocates have ample discretion in the conduct of cases of which they are in charge and the Court has no power to fetter their discretion by insisting that their case

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should be put to this witness or that. (*Das*, J.) MAHOMED MIAN *v.* EMPEROR **52 I.C. 54 = 20 Cr. L.J 566.**

——— **S. 154** — *Hostile witness—Contradictory statements—Weight due to.*

The mere fact that at the trial before the Sessions Judge a prosecution witness tells a different story from that recorded by the Police after the occurrence does not necessarily make the witness a hostile witness 13 C 53; 24 C.W.N. 860, referred to. Where a witness called by a party is cross-examined by him his evidence cannot be believed in part and disbelieved as to the rest but it must be rejected in toto. (*Wilmsely and Pearson*, JJ.) EMPEROR *v.* SATYENDRA. **24 Cr L J 193 = 1923 Cal. 463 = 37 C.L.J 173.**

——— **S. 154** — *Hostile witness, who is.*

An unfavourable witness is not necessarily hostile. A hostile witness is one who from his manner, shows he is not inclined to tell the truth to the Court. A party, called by his opponent, cannot as of right be treated as hostile the matter being in the discretion of the Court. (*Mookerjee and Buckland*, JJ.) LUCHIRAM *v.* RADHA CHARAN. **66 I.C. 15 = 34 C.L J. 107.**

——— **S. 154** — *Hostile witness—Who is—Commissioner cannot exercise discretion of Court*

A witness is considered adverse where in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof When a witness is treated as hostile, cross-examination must be done to discredit the witness altogether and not merely to get rid of part of his testimony. There is in this respect no distinction on principle between an attesting witness whom a party is obliged to call and any other withess whom he may cite of his own choice but the Court may be easily persuaded in the former than in the latter case. In an examination of witnesses on commission, the Commissioner cannot exercise the discretion vested in Court under S 154 of the Act. (*Mookerjee*, J.C. *and Fletcher*, J.) SURENDRA KRISHNA MONDAL *v* RANI DASSI. **47 Cal 1043 = 33 C L J 31 = 59 I.C. 81 = 24 C W.N 860.**

——— **S. 154** — *Hostile witness—Cross-examination—Admissibility of evidence.*

It is not open to the prosecution in a criminal trial to cross-examine their own witness unless the Court declares him to be a hostile witness, unless this is done the answer to questions would not be admissible in evidence and the Court should not allow such questions. (*Coutts and Das*, JJ.) JAGDEO SINGH *v.* EMPEROR. **1 Pat 753 = 4 Pat. L.T 232 = 24 Cr. L.J 69 = 1923 P. 62.**

——— **S. 154** — *Hostile witness—Who is.*

A witness is not necessarily hostile because in an absent-minded moment he admits the truth. Before a prosecution witness can be

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declared hostile, there must be good ground for believing that the statement be made in favour of the defence is due to enmity to the prosecution. (*Roe and Ali Imam*, JJ.) FOUZDAR RAI *v.* EMPEROR. **4 Pat. L.W. 111 = 44 I.C. 33 = 19 Cr. L.J. 241 = 3 Pat. L.J. 419 = 1918 Pat. 254.**

——**Ss. 155 and 157**—*Identification in jail—Value of, as evidence.*

Evidence of identification in the jail, is not substantive evidence in the trial as it is not on oath, and is made in extra-judicial proceedings. When a person making such an identification, states in Court that he can identify no one, the evidence of identification is inadmissible. (*Lindsay and Sulaiman*, JJ.) NAGINA *v.* EMPEROR. **19 A.L.J. 947.**

——**S. 155**—*Recital of age in guardianship petition—If admissible in evidence.*

Recital of age in guardianship petition is admissible in evidence. (*Mookerjee and Rankin*, JJ.) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDURY. **38 C.L.J. 213 = 1924 C. 420.**

——**Ss. 155 and 145**—*Witness if can be contradicted by his previous statement.*

A witness cannot, under S. 155, be contradicted by previous statement made by him unless his attention is drawn to it as laid down in S. 145 of the said Act. (*Johnstone and Shah Din*, JJ.) AMIR BEGAM *v.* BEGAM. **9 P.W.R. 1914 = 22 I.C. 861 = 127 P.L.R. 1914.**

——**S. 155**—*Use of Police diary by investigating officer—Corroboration.*

The investigating police officer when in the witness-box was asked about a certain date and the names of certain persons and the Court directed him to give the date and the names from the Police diary. This the witness did. Thereupon the defence asked for an inspection of the whole diary. This was not allowed; but the Magistrate offered an inspection of the date and the names in respect of which the witness had refreshed his memory from the diary. This, however, was refused. *Held* that there was nothing illegal in the course adopted by the Magistrate. There is nothing in the law which entitles the defence to an inspection of anything more than that portion of the diary from which the witness refreshed his memory. (*Coutts and Das*, JJ.) LACHMI SINGH *v.* EMPEROR. **3 Pat. L.T. 562 = 68 I.C. 623 = 23 Cr. L.J. 591 = 1922 P. 362 (1).**

——**Ss. 155 and 157**—*Statements to Police—Corroboration—Cr. P. Code, S. 162—Police diaries.*

Statements of witnesses made to the Police should not be used to corroborate them except in very special circumstances. The evidence of a witness hostile to the Crown may be impeached by reference to the Police diary.

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(*Roe and Ali Imam*, JJ.) RAM CHARITRA SINGH *v.* EMPEROR. **4 Pat L.W. 325 = 19 Cr. L.J. 512 = 45 I.C. 272 = 3 Pat. L.J. 563 = 1918 Pat. 95.**

——**S. 155**—*Statement to Police—Person whether bound to state truth to Police.*

Section 162, Cr. P. Code, allows the credit of a witness to be impeached, by a statement which he is alleged to have made to the Police in the course of an investigation under Chapter XIV of the Code though no person is bound to state the truth to the Police in the course of the above investigation. The statement to the Police is not evidence like a statement made on oath before a competent authority. (*Maung Kin*, J.) NGA PYE *v.* EMPEROR. **41 I.C. 668 = 18 Cr. L.J. 844.**

——**S. 155 (3)**—*Contradictory statements by witness—Previous depositions how far can be admitted to impeach his credit.*

Where a previous deposition of a witness is relied on to impeach his credit under S. 155 (3), the contradictory statements alone can be admitted in evidence. (*Mookerjee and Carnduff*, JJ.) IMAMBANDI *v.* MATASUDDI. **13 I.C. 678 = 15 C.L.J. 621.**

——**S. 156**—*Cr. P. Code, Ss. 157 to 167—'Local area' of C.I.D. Officer*—(*Per White, C.J. and Ayling*, J.)

The 'Local area' of an officer of the C.I.D, is the Presidency of Madras and he is therefore competent to investigate an offence under the Cr. P. Code. (*Sankaran Nair*, J. *Contra.*) An Inspector of the C.I.D. is not one of the officers legally entitled to investigate an offence under Ss. 157 to 167 of the Cr. P.C. and so his evidence is not admissible under S. 157 of the Evidence Act. (*White*, C.J. *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILAKANTA. **35 Mad. 247 = (1912) M.W.N. 207 = 13 Cr. L.J. 303 = 22 M.L.J. 490 = 14 I.C. 849 (S.B.) = 11 M.L.T. 1 Supp.**

——**S. 157**—Chowkidhar's *register containing entires as to birth and death—Corroborative evidence.*

A *chowkidhar's* register containing entries of the birth and death of a person may be produced as corroborative evidence. 10 I.C. 713, Dist. (*Piggott*, J.) BALDEO *v.* ABHEY RAM. **24 I.C. 540 = 12 A.L.J. 945.**

——**S. 157**—*Petition—Contents of—Admissibility.*

Per *Sanderson*, C.J.—A petition put in by a client for adjournment on the ground that their pleader could not appear on account of "hartal" is admissible in evidence in proceedings under the Legal Practitioner's Act, under S. 157 of the Evidence Act in corroboration of the evidence which the witness had already given at the time when his attention was directed to its contents and when he said the contents were true to his knowledge. Per *Woodroffe*, J.—The petition is improperly used, for the question by which it was made evidence

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was a leading one. But this rather goes to the weight of the evidence so elicited than inadmissibility. The petition is evidence of a step taken in the proceedings and would be corroborative in nature. (*Sanderson*, C.J. *Woodroffe and Mookerjee*, JJ.) EMPEROR *v.* RAJANI KANTA BOSE. **49 Cal. 732 = 35 C.L.J. 356 = 24 Cr. L.J. 33 = 26 C.W.N. 589 = 1922 C. 515.**

——S. 157—*Statement, not first information—How used in evidence.*

Where a statement made to a Police officer, is not the first information under S. 154 of Cr. P. Code, the Magistrate must take from the police officer, a statement, that the particular statement was made to him. (*Beachcroft and Ghose*, JJ.) SALIM SARDAR *v.* EMPEROR. **61 I.C. 650 = 22 Cr. L.J. 410.**

——S. 157—Kanungo's *report on inquiry—When admissible.*

Anybody who has seen a place, may be examined as to what he saw under the general provisions of law. A *Kanungo* deputed to make inquiry under S. 148 of the Cr. P. Code may give his deposition, and his report is admissible to corroborate his sworn testimony. (*Holmwood and Sharfuddin*, JJ.) ACHAMBIT DAS *v.* SARADA PRASAD HOLDA. **12 I.C. 88 = 12 Cr. L.J. 480.**

——S. 157—*Evidence—Value of Test.*

A statement admissible under S. 157 of the Evidence Act can be proved by a person to whom it was made. Evidence of a person who hears a statement being made is as direct proof of the same as the evidence of a person who sees a deed is proof of the deed being done. (*Chevis*, J.) HEYMERDINGURI *v.* EMPEROR. **58 I.C. 344 = 21 Cr. L.J. 760 = 2 U.P.L.R. (L) 170.**

——S 157—*Deposition before committing Magistrate—Corroboration — Statement before investigating officer—Admissibility — Cr. P. Code, S.* 283.

The effect of S. 288, Cr. P. Code, is to place the deposition of a a witness berore the committing Magistrate exactly on the same footing as the deposition in the Sessions Court. It is "testimony" within the meaning of S. 157 of the Evidence Act and statements made by the witness before the investigating officer are admissible for the purpose of corroborating such "testimony." It is in the discretion of the Sessions Judge to believe and act upon the statments before the committing Magistrate in preference to contradictory statements made before himself on the ground that the former are corroborated by the statements made before the investigating officer. (*Ayling and Odgers*, JJ.) *In re* VELLIAH KONE. **24 Cr. L J 417 = 16 L.W. 239 = 43 M L.J. 222 = 45 M. 766 = (1922) M.W N. 506 = 31 M.L T. 175 = 1923 Mad. 20.**

——S. 157—*Statements recorded by Police during investigation.*

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Statements by witnesses, recorded by a Police Superintendent during investigation are not admissible in evidence, nor oral evidence based on such statements. 35 M. 397, Ref. The words 'legally competent' mean having power under some law, statutory or otherwise. The section is controlled by S. 162, Cr.P.C. (*Sadasiva Aiyar and Napier*, JJ.) KUMARAMUTHU PILLAI *v.* EMPEROR. **(1919) M.W.N. 199 = 20 Cr. L.J. 354 = 28 M L.T. 379 = 50 I.C. 834 = 10 L.W. 289.**

——S. 157—'*Fact*'—*Meaning of.*

In S. 157 the word "fact" is used not merely in the sense of an "event", but also includes a continuing fact, such as possession, and that the documents proving possession are therefore admissible in evidence under that section. (*Ayling and Oldfield* JJ.) MUTHALAGIRI REDDY *v.* PAPPI NAICKEN. **25 I.C. 510.**

——S. 157—*Corroborative evidence.*

The Admission Register of pupils in a school in which their ages are entered is at the most corroborative evidence under S. 157. (*White*, C.J. *and Tyabji*, J.) KRISHNAMA CHARIAR *v.* VEERAVELLI KRISHNAMA CHARIAR. **38 Mad. 166 = 13 M.L T. 385 = (1913) M.W.N. 355 = 19 I C. 452 = 24 M L.J. 517.**

——S. 157—*Statements made to a C.I.D. Officer—Admissibility—Officer 'legally competent to investigate' Cr. P.C., S.* 162.

(Per *Benson, Wallis and Miller*, JJ.)—An inspector of the C.I.D. is an officer 'legally competent to investigate' within the meaning of S. 157 of the Evidence Act. (*Abdur Rahim and Sundara Aiyar*, JJ, Contra.) An officer of the C.I.D. who investigates a matter under the order of his superior is not an officer 'legally competent' within the meaning of S. 157 as he does not derive his power from the Police Act or the Cr. P.C. (*Sir Ralph Benson, Wallis, Miller, Abdur Rahim and Sundara Aiyar*, JJ.) MUTTUKUMARASWAMI PILLAI *v* EMPEROR. **35 Mad. 397 = 13 Cr. L J 352 = (1912) M.W.N. 549 = 14 I.C. 896 = 12 M.L.T. 1 (F.B.).**

——S. 157—*Test identification—Statement made to police—Admissibility.*

Owing to the lapse of time between an identification by the Police and the trial, a witness was unable to say whether the person on trial is the person identified, *held*, that the statement made by the witness to the Police is admissible in evidence under S. 157. (*Mullick and Atkinson*, JJ.) SARWAR KHAN *v.* EMPEROR. **55 I.C. 273 = 21 Cr. L J, 257.**

——Ss. 157, 159 and 32 (2)—*Chowkidhar's diary—Entries made for illiterate chowkidhar by others, the value thereof.*

Entries of birth and death of a certain person made for an illiterate chowkidhar, in his diary by other persons, cannot, after the chowkidhar's death, be admissible in evidence under S. 32 (2) in spite of the deposition of the persons, who

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made the entries that they made them at the request of the chowkidhar. But these entries are admissible under S 157 and also possibly under S. 159 of the Act. 1 I.C. 376, Dist. (*Chamier*, C.J. *and Roe*, JJ.) NAINA KOER *v.* GOBARDHAN SINGH. **1919 Pat. 252 = 37 I.C 424 = 2 Pat. L.J. 42.**

——S. 157—*Panchanama—Evidence.*

A Panchanama is not evidence of the statements contained therein and it should be proved and exhibited as relevant evidence of those statements. (*Pratt*, J.C. *and Hayward*, A.J.C.) IMPERATOR *v.* MISRI. **12 I.C. 209 = 12 Cr. L.J. 489 = 5 S L.R. 31.**

——S. 159—*Refreshing memory—Question as to date of birth.*

A witness is entitled to refer to a horoscope made at the time to refresh his memory though the document is not filed in a list under O. 7, R. 14. (*Lord Phillimore*). BANWARI LAL *v.* MAHESH. **41 All. 63 = 21 O.C. 328 = 23 C.W.N 577 = 6 O.L.J. 168 = (1919) M.W.N. 490 = 49 I.C. 540 = 46 I.A. 284 (P.C.).**

——S. 159—*Refreshing memory—Police diary—Witness can be compelled to refresh his memory.*

A witness can be compelled to refresh his memory by reference to any memorandum or other writing prepared by the witness, if there is a lapse of memory on a point asked of the witness. (*Piggott and Walsh*, JJ.) HARKHAU *v.* EMPEROR. **63 I.C. 575 = 19 A.L.J. 76.**

——S. 159—*Refreshing memory—Date of death.*

The plaintiff in order to show that his father died before the property had been acquired, produced a mortgage-bond which had been executed by him on the 28th October 1892 in which he was described as the son of Khan Mahomed Akonda deceased. *Held* the deed is admissible to refresh memory as to when the father died. (*Mookerjee and Rankin*, JJ.) SAYERUDDIN *v.* SAMIRUDDIN. **1923 Cal. 378.**

——Ss. 159 and 160—*Refreshing memory—When allowed.*

When a written record brings to the mind of a witness neither any recollection of the facts mentioned in it nor any recollection of the writing itself but which nevertheless enables him to swear to a particular fact from the conviction of his mind on seeing the writing which he knows to be genuine, the witness may be allowed to refresh his money by looking at the record. (*Newbould and Suhrawardy*, JJ.) ABDUL SALIM *v.* EMPEROR. **49 Cal. 573 = 35 C L.J 279 = 26 C.W.N. 630 = 23 Cr. L J. 657 = 1922 Cal. 107.**

——S. 159—*Age certificate.*

An age certificate given by a medical man to his patient can be used by the medical man under S. 159. (*Coutts-Trotter and Srinivasa Aiyengar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBRAYA GOUNDAN. **33 I.C. 142.**

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——S. 159—*Witness—Duty of—Refreshing memory.*

A witness before a Court of justice is under an obligation to tell the truth of the whole truth to the very best of his power. If upon any question he suffers from a *bona fide* lapse of memory of that failure of memory can be remedied by reference to any memorandum or other writing prepared by the witness at the time of the Court invites the witness to refresh his memory, with reference to the writing, the witness is under an obvious obligation to do so. It is part of the duty under which he lies to lay the whole truth before the Court to the best of his ability. (*Piggott and Walsh*, JJ.) HARKHOO *v.* EMPEROR. **63 I C. 575 = 23 Cr, L.J. 142 = 24 O.C. 303.**

——S. 159—*Arbitration proceedings—Evidence taken down by clerk—Whether admissible—Procedure.*

A note of evidence taken by a clerk in the course of abortive arbitration proceedings cannot be admitted in evidence, the proper procedure is to question the clerk as to what was said at the time, allowing him to refresh his memory by reference to the note under S. 159 of the Evidence Act. (*Hartnoll, Offg.*, C.J. *and Twomey*, J.) MA AUNG BYU *v.* MAUNG THET HNIN. **23 I.C. 940 = 7 Bur. L.J. 240.**

——S. 160—*Scope of—Correctness of statements—Proof of.*

The degree of conviction postulated by S. 160 cannot be treated as equivalent to any, on which the witness may choose to say that he is sure, whether or not it is too fantastic or illegal to commend itself to reasonable men. The witness must satisfy the Court, with reference to ordinary probabilities, of his right to be sure that the record relied on by him is correct. (*Abdur Rahim and Oldfield*, JJ.) M.S. YESUVADIYAN *v.* SUBBA NAICKER. **52 I.C. 704.**

——S. 161—*Police diaries—Right of accused to inspect.*

An investigating officer examined as a witness for the prosecution was asked about a certain date and the names of certain persons. Thereupon the Court directed him to give out the particulars from a reference to his diary. *Held* that the accused was entitled to an inspection of that portion of the diary from which the witness refreshed his memory and not of the rest of the document. (*Coutts and Das*, JJ.) LACHMI SINGH *v.* EMPEROR. **2 Pat 74 = 3 P.L.T. 562 = 23 Cr L J. 591. 1922 P. 562 (1).**

——S. 162—*Summons to produce document—Discretion.*

If the Court decides to summon a Government Official for the production of certain

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document, it should do so after careful consideration. And once summons have been issued, production should be insisted on, if the party so desires it. (*Drake-Brockman*, J.C.) LAXMAN RAO *v.* VITOBA. **45 I.C. 898.**

——S. 163—*Production of documents by a party—Inspection by plaintiff—Admission of documents and evidence.*

In a pending trial the defendant produced certain account books and gave inspection of the same to the plaintiff on his request. The plaintiff however did not admit the genuineness of those accounts. The Court admitted the documents in evidence without proof and asked the plaintiff to adduce rebutting evidence if any, *held* that the procedure of the lower Court was not justified by S. 163 of the Evidence Act. S. 163 does not render proof of the document to be executed unnecessary or alter the normal incidence of that burden. *Quaere.*—Whether S. 163 of the Evidence Act is applicable to accounts produced under the procedure for discovery or only to accounts produced after the trial has begun. (*Oldfield and Venkatasubba Rao*, JJ.) RAJAGOPALA AIYENGAR *v.* RAMANUJA AIYENGAR. **(1923) M.W.N. 282 = 18 L.W. 165 = 1923 Mad. 607.**

——S. 163—*Documents filed under—Evidentiary value of.*

Evidence admitted under the special provisions of S. 163 of the Indian Evidence Act need not be conclusive evidence against the party who has inspected the documents. The documents which the other party has produced become evidence in the case for what they may be worth. (*Lindsay*, J.C.) RAMADHIN *v* RAM DAYAL, **23 O.C. 166 = 57 I.C. 973 = 2 U.P.L.R. (J.C.) 134.**

——S. 164—*Statements recorded—Value of.*

An indiscriminate use of S. 164, Cr. P.C. is to be deprecated. Statements should not be recorded under that section unless the person making it, is a free agent and voluntarily agrees to have his statement taken down. (*Rattigan*, C.J. *and Le-Rossignal*, J.) HIRALAL *v.* EMPEROR. **18 P.W.R. (Cr) 1918 = 16 P.R. (Cr.) 1918 = 19 Cr. L.J. 517 = 45 I.C. 277 = 63 P.L.R. 1918.**

——S. 165.

Where a Magistrate on the assurance of the police *peshi* clerk in his Court asked a defence witness whether the accused had ever been challanged in a *badmashi* case. *Held* that this was an improper question unless the Magistrate had convinced himself on the best information that there was some real foundation for the facts mentioned in the question. (*Knox and Karamat Hussain*, JJ.) LUCAS, C.J, *v.* RAMAI SINGH. **23 I.C. 185 = 15 Cr. L.J. 233 = 12 A.L.J. 152.**

——S. 165—*Duty of trial Court—Interventian of appellate Court.*

The intervention of the trial Court with questions during the examination of the witness, cannot be set right on appeal unless

EVIDENCE ACT (I of 1872), S. 167.

it is established that the intervention exceeded the bounds of even the comprehensive provision of S. 165 of the Evidence Act and so impeded the legitimate work of counsel as to cause a mistrial leading to failure of justice. (*Mookerjee*, A.C.J. *and Fletcher*, J.) SURENDRA KRISHNA MONDAL *v.* RANI DASSI.
47 Cal. 1043 = 59 I.C. 814 = 24 C.W.N. 360 = 33 C.L.J. 34.

——S. 165—*Evidence—Power to order production of—*Audi alteram partem—*Indicative evidence—Duty of judicial officer—Practice.*

S. 165 of the Evidence Act and O. 13, r. 10, C.P.C., are intended to enable the Court to get at the truth. But the act of sending for document under those provisions does not *ipso facto* make the document evidence in the case. If relevant evidence as a guide to such evidence is found therein, proceedings must be taken, if such evidence is admissible at that stage to have it brought into the trial according to the provisions of law. The rule of *audi alteram partem* is one of elementary justice and accords with common sense. The duty of a judicial officer is to ascertain judicially which way the truth lies and not which party has made the better fight. (*Stanyon*, A.J.C.) PUNJA *v.* BHADU. **18 I.C. 857 = 9 N.L.R. 11.**

——S. 165—*Court can call for and admit evidence.*

Even though a document is not produced at the first hearing of a case the Court can call for the document under S. 165 of the Evidence Act. (*Ashworth*, A.J.C.) SHANKAR LAL *v.* MAHBUB SHAH. **25 O.C. 286 = 1923 (O.) 59.**

——S. 165—"*Any witness*" *includes Court witness—Right of cross-examination.*

The words "any witness" in S. 165, Evidence Act include a Court witness. *Quaere* how far the right to cross-examine such a witness is an absolute right or requires the leave of Court. (*Simpson*, A.J.C.) MAKUND SINGH *v.* MT. GHAFUR-UN-NISSA. **74 I.C. 108 = 9 O. & A.L.R. 549.**

——S. 167—*Personal knowledge—Use of.*

A Magistrate cannot import his personal opinion, about the personal character, in the decision of the case before him nor can he refuse to believe evidence in the accused's favour on that account. (*Piggott and Walsh*, JJ.) JAI NARAIN *v.* EMPEROR.
20 Cr. L.J. 283 = 50 I.C. 171 = 1 U.P.L.R. (H.C.) 22.

——S. 167—*Evidence—Admission of irrelevant evidence and whether vitiates judgment.*

The main fact that inadmissible evidence was admitted by Court does not vitiate judgment if the conclusion is arrived at on the merits apart from the evidence improperly admitted. (*Mookerjee and Beachcroft*, JJ.) AMBAR ALI *v.* LUTFE ALI. **45 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.**

EVIDENCE ACT (I of 1872), S. 167.

——S. 167—*Judgment on—Evidence not on record.*

A judgment on evidence not on record will be set aside on appeal. (*Jenkins*, C.J. *and Mookerjee*, J.) MONI LAL KAR *v.* UMA CHARAN CHAKRAVARTY. **23 I.C. 571= 19 C.L.J. 541.**

——S. 167—*C.P. Code, S.* 115—*Material irregularity.*

Examination of a witness without notice to the parties or their pleaders and without affording them an opporunity to cross-examine him, or to rebut his statements and decision on such evidence, is material irregularity within S. 115, of the C.P. Code. (*Mookerjee and Beachcroft*, JJ.) PEARY LAL DAS *v.* PEARY DAL DAWN. **18 C.L J. 646=22 I.C. 407= 19 C.W.N. 903.**

——S. 167 — *Inadmissible document—Omission to object to its admission.*

It is the duty of the Court to exclude the irrelevant document from evidence even if no objection is taken to its admissibility by the parties. Omission to object would not render it admissible. (*Miller*, C.J. *and Mullick*, J.) SUNDARA KUER *v.* RAM KAIR CHOWBAY. **5 Pat. L J. 410 = 1 Pat. L.T. 702=57 I.C 561= 1921 Pat. 17.**

——S. 167—*Misdirection to the jury.*

A misdirection to the jury is strictly not a case of improper admission or rejection of evidence within the meaning of S. 167. (*Ormond*, O.C.J., *Robinson*, *Parlett and Maung Kin*, JJ.) THEIN MYIN *v.* EMPEROR. **9 L.B.R. 60=42 I.C. 161= 18 Cr. L.J. 929= 10 Bur. L.T. 123 (F.B.).**

EXAMINATION.

See EVIDENCE ACT, SS. 132-153.

EXAMINATION OF WITNESSES.

See (1) C.P. CODE, O. 16 AND O. 26.
(2) EVIDENCE.
(3) EVIDENCE ACT, SS. 118-134.

EXCESS PROFITS DUTY ACT (X of 1919).

——S. 2, 3, 15 and 31—"*Business*"—*Income-tax Act, S.* 51 (1)—*Calcutta Turf Club—Income from racing is liable to duty.*

The Calcutta Turf Club carries on 'business' within the meaning of S. 2 of the Excess Profits Duty Act and is liable to duty under S. 3 in respect of income derived from non-members under the following heads: (1) gate money or entrance fee; (2) entrance fee paid by owners of horses; (3) Book-maker's licence fees; (4) percentage of totalisation. That the members do not receive a profit out of the transactions would not entitle the club to any exemption. (*Sanderson*, C.J., *Teunon and Richardson*, JJ.) THE ROYAL CALCUTTA TURF CLUB *v.* SECRETARY OF STATE. **66 I.C. 473=25 C.W.N. 734.**

EXCESS PROFITS DUTY ACT (X of 1919) S 6.

——S. 2—*Business—Meaning of—Company owning business and letting tenements—Liability to tax.*

The term 'business' in S. 2 has the same meaning which it has in the Income-tax Act. The Act does not extend that meaning nor introduces anything which, according to the scheme of the Income-tax Act, is wholly dissimilar. A person who has invested his capital in house property and kept a rent office and a staff of rent collectors, clerks, etc., for the purpose of letting out his house and collecting rents. *Held*, he was not carrying on a business within the Excess Profits Duty Act. A company which holds house property and distributes the rents in the form of dividends to shareholders is not carrying on business within that Act and although it is an association for acquiring gain, yet the method is passive by owning property and not by the active carrying on of business. (*Twomey*, C.J. *and Robinson*, J.) *In re* KALADAN SURATEE BAZAAR CO. **56 I.C. 914.**

——Ss. 4, 5, (h) 6 (1) (b)—*Income tax Act, S.* 2 (1)—*Capital employed in business is within section.*

Moneys invested in the shares of public companies and in Govt. securities and treated by the firm as part of the capital of the firm, are "capital employed in the business of the firm" under the Excess Profits Duty Act. Moneys lent to business concerns and individuals were also capital employed in the business. (*Sanderson*, C.J. *and Richardson*, J.) MARTIN & CO. *v.* SECY. OF STATE. **67 I.C. 909=25 C.W.N. 875.**

——Ss. 4 and 19—*Duty—Not assessable within the year—Exemption under S.* 19.

Under the Act, the assessee need not be assessed to duty within the revenue year for which the duty is imposed. S. 19 of the Act does not exempt profits from liability unless such profits are chargeable with Super tax which exceeds the excess profits duty. (*Wallis*, C.J., *Ayling and Krishnan*, JJ.) CHIEF COMMISSIONER OF INCOME-TAX *v.* RAMANATHAN CHETTIAR. **44 Mad. 768= 14 L.W. 57=(1921) M.W.N. 513= 63 I.C. 420=41 M.L.J. 189 (F. B.)**

——S. 6, (1) (b)—*Proviso—Increase of capital—Exemption—Assessee, duty of.*

Where an exemption from excess profits duty is claimed under the proviso to S. 6, (1) (*b*) of the Act, on the ground that the capital has been increased, it is the duty of the assessee to satisfy the Board as to the increase. (*Wallis*, *Ayling and Krishnan*, JJ.) DEPUTY COMMISSIONER, INCOME-TAX *v.* HAJEE ABDULLA CO. **70 I.C. 30=14 L.W. 413 (F.B.).**

EXCESS PROFITS DUTY ACT (X of 1919), S. 18.

———S. 18—*Proceedings for the recovery of duty—Limitation Rules framed under the Act—Rule 24.*

Rule 24 (1) describes how the Excess Profits duty is to be recovered when default has been made in payment. This is the only rule dealing with mode of recovery, and the subject of the rule is entered as "mode and time of recovery." Also rules 23 and 24 of the rules made by the Govt. under S. 18 (1) and (2) of the Excess Profits Duty Act are classed under the heading "recovery of duty" whilst rule 13, which is the rule providing for a notice of demand being served on the person assessed, is put under the heading "demand". From this it is evident that the demand made on the assessee is treated in the rules as something quite distinct from the recovery of the duty, the proceedings for which begin when default has been made. The same distinction is made in the Income Tax Acts, VII of 1918 and XI of 1922, where the notice of demand is provided for in a chapter the subject of which is "Deductions and Assessment," whilst there is a separate chapter dealing with the subject of the recovery of the tax. The words in sub-rule (3) of the rule 24 "proceedings for the recovery of any sums" mean the proceedings taken under sub-rule (1) of that rule after default has been made in the payment. (*Martineau*, J.) GIAN SINGH BAHADUR SINGH *v.* EMPEROR. **4 Lah. 166=1924 Lah. 64 (1).**

———Sch. 1—*'Carrying on business'—Agents, secretaries and treasurers of a mill company, status of.*

Agents, secretaries and treasurers of a mill company, are not to be considered as carrying on a business excepted under Sch. I, to the Act nor are they whole-time officers or servants of the business. (*Macleod*, C.J. *and Fawcett*, J.) *In the matter of* DORAISAMI AIYER & CO. **45 Bom. 1064= 63 I.C. 775=23 Bom. L.R. 609.**

———Sch. 11, Cl. (1), Proviso—*Profits intended for business is not capital.*

Unless profits are actually employed in business, they cannot be treated as capital. Profits intended to be so used are not capital. Whether they are so employed is a question of fact and the Chief Revenue authority should decide the question on the materials before it. (*Macleod*, C.J. *and Fawcett*, J.) *In the matter of* BOMBAY AND PERSIA STEAM NAVIGATION CO. **45 Bom. 881= 60 I.C. 964=23 Bom. L.R. 139.**

EXCHANGE.

See TRANSFER OF PROPERTY ACT, S. 118.

EXCLUSIVE POSSESSION.

See (1) ADVERSE POSSESSION.
(2) CO-SHARER.
(3) HINDU LAW, JOINT FAMILY.

EX-COMMUNICATIONS.

See (1) C.P.C., S. 9.

EXECUTION—Appeal.

(2) CASTE DISABILITIES REMOVAL ACT.
(3) HINDU LAW.
(4) TORT.

EXECUTING COURT.

See C.P.C., S. 21.

EXECUTION APPLICATION.

See (1) C. P. CODE, S. 47 AND O. 21, R. 11.
(2) LIMITATION ACT, ART. 181.

EXECUTION OF DOCUMENT.

See (1) DEED, EXECUTION.
(2) WILL, EXECUTION.

EXECUTION PROCEEDINGS.

See (1) C.P. CODE, O. 21.
(2) EXECUTION.

EXECUTION.

See also C. P. CODE, S. 47 AND O. 21.

APPEAL.
APPLICATION.
ATTACHMENT.
COMPLETION OF.
COMPROMISE DECREE.
CONSTRUCTION OF DECREE.
DECREE BINDING.
DECREE NULL AND VOID.
DECREE NOT TO BE VARIED.
DUTY OF COURT.
EQUITABLE EXECUTION.
EX PARTE ORDER.
FINAL DECREE.
FOREIGN DECREE.
JOINT DECREE.
JURISDICTION.
LEGAL REPRESENTATIVES.
LIABILITY OF JUDGMENT-DEBTOR.
LIMITATION.
MESNE PROFITS.
MODE OF.
RIGHT TO.
SCOPE OF.
SETTING ASIDE.
SURETY.

Appeal.

———*Appeal—Judicial order.*

Every judicial order made in the course of execution proceedings, is not an order under S. 47 of the Code. (*Mookerjee and Teunon*, JJ.) DEOKI NANDAN SINGH *v.* BANSI SINGH. **14 C.L.J. 38=10 I.C. 871=10 C.W.N. 124.**

———*Appeal—Order refusing execution against partner.*

An order refusing execution of a decree against a partner of a firm against which the decree was obtained, has the force of a decree under O. 21, R. 50 (3) and is appealable. (*Ormond and Twomey*, JJ.) VALLIAPPA *v.* RANGASWAMI. **8 L.B.R. 300= 35 I.C. 429=10 Bur. L.T. 42.**

EXECUTION—Application.

Application.

———*Application—Dismissed for default—Restoration.*

Where an application for cancellation of sale in favour of the applicant and recovery of the property on the allegation that the property did not belong to the judgment-debtor, was dismissed for default, the decree-holder cannot apply for the restoration of the same and the Execution Court has no power to entertain such an application. (*Rafiqu*e, J.) BHIKAM KHAN *v.* DAN SINGH. **1923 All. 544.**

———*Application—Striking off—Effect.*

When a case is in appeal and in the meanwhile the execution proceedings are struck off, the execution proceedings and consequent attachment remain effective; so the transfer of the attached property during the pendency of the appeal is void. When once an objection is overruled it is not open to the party to raise the same over again in appeal and the decree-holder is entitled to execute his decree. (*Tudball and Sulaiman*, JJ.) DAOOD ALI SHAH *v.* HAYAT ALI SHAH.
68 I.C. 711=2 U.P.L.R. (All.) 200.

———*Application—Revival—Limitation.*

A decree for demolition of a house was made on 31st July, 1907. An application for execution was made on 15th February, 1909. On the 26th May, 1909, the judgment-debtor took two weeks' time to demolish the building and the application was struck off the file as the decree-holder consented. On the 21st July, 1913, another application was put in; *Held*, that this application was to revive the former application and execution was not barred. (*Bannerjee*, J.) GANGA PRASAD *v.* JWALA PRASAD. **26 I.C. 815.**

———*Application—Continuation of—First application for arrest—Second application for attachment.*

Where a first application for execution was for arrest of the judgment-debtor and the second application was for attachment of his property, the second is not one in continuation of the first application. (*Tudball* J.) MEVA LAL *v.* AHMADALI. **13 I.C. 929=9 A.L.J. 17.**

———*Application—Law applicable—Decree passed under one act—Execution when the Act is repealed by another Act is governed by the latter Act.*

A suit terminates with the decree and consequently when after the passing of the decree, the Act under which it was passed is replaced by another Act, the application for execution must be gouerned by the latter Act, for though it is an application in the suit it is a separate proceeding. (*Chatterjee and Mullick*, JJ.) JAGENDRA NATH DEY *v.* GAUR SINGH MURA. **34 I.C. 385=20 C.W.N. 582.**

———*Application—Fraud—Suspension of.*

There is no suspension of execution, where there is no fraud or force which prevented

EXECUTION—Attachment.

the consideration of a previous application. (*Holmwood and Imam*, JJ.) KARTIK CHANDRA MONDAL *v.* NILMANI MONDAL. **32 I.C. 931=20 C.W.N. 686.**

———*Application—Stay—Fresh application.*

The decree-holder obtaining possession after an unconditional order of stay by the appellate Court till the decision of the appeal must again apply for the same after the appeal is disposed off. (*Mookerjee and Beachcroft*, JJ.) KALI SHANKER SAHAI *v.* PROTAP UDAI NATH SAHAI. **16 I.C. 708 (2).**

———*Application—Pendency of.*

An execution application must be deemed to be pending until it is validly disposed of. (*Sadasiva Aiyar and Napier*, JJ.) VENKATAMMA *v.* MANIKKAM NAYANI VARU.
26 I.C. 244=16 M.L.T. 399.

———*Application—Abandonment—Fresh application.*

There may be a presumption of abandonment when a second application is made which may be rebutted by conduct. (*White and Oldfield*, JJ.) KURUCHA GANGU NAIDU *v.* KOOVURI BASAVA REDDY. **13 M.L.T. 145=18 I.C. 691=(1913) M.W.N. 821.**

Attachment.

———*Attachment—Money due from Railway Company—Under transmission through Post Office—Post Office, agent of the judgment-debtor.*

An attachment of the money due to the judgment-debtor from the Provident Fund of a Railway Company while in the hands of the Post Office in the form of a Money Order sent by the Fund at the request of the judgment-debtor is good as the Post Office was the agent of the judgment-debtor and not of the Railway Company. (*Tudball*, J.) PARMER *v.* CAWASJEE. **33 I.C. 723=14 A.L.J. 236.**

———*Attachment—Dismissal of application—Attachment, if subsists after.*

When the property is once attached in execution of a decree the attachment subsists even when the execution application is dismissed unless the order of dismissal amounts to a declaration that the decree is incapable of execution and unless the order raises the attachment. (*Stanley*, C.J. *and Banerji*, J.) IMTIAZ ALI *v.* BISHAMDAS. **10 I.C. 245=8 A.L.J. 619.**

———*Attachment—Claimant a third person—Failure to establish claim.*

Where the decree-holder in a suit for declaration that certain property belongs to judgment-debtor, proves the title of the latter, he is entitled to a decree, unless a third person proves that he has acquired title by adverse possession. A claimant in attachment proceedings must prove that he is the owuer of the property if he fails he has no further interest in the

EXECUTION—Attachment.

proceedings. (*Macleod*, C.J. *and Fawcett*, J.) SWAMIRAO SHRINIVAS *v.* BHIMABAI PADAPPA. **45 Bom. 1020=62 I.C. 101=23 Bom. L.R. 416.**

——— *Attachment — Wrongful attachment —Decree-holder's liability.*

A suit by the rightful owner for wrongful attachment of property, which is attached in execution as being the property of the judgment-debtor is maintainable against the decree-holder, in spite of a subsequent order that the property should not be released and returned to the true owner, pending the decision of the suit by decree-holder that the property is liable to attachment. (*Mookerji*, A.C.J. *and Fletcher*, J.) BHUSHAN CHANDRA PAL *v.* NARENDRANATH KOOR.
60 I C. 280=32 C.L.J. 286

———*Attachment—Who can object to.*

An objection to the attachment of property on the ground that it does not belong to the judgment-debtor is to be urged by the person claiming ownership of the property and none else. (*Abdur Rahim and Odgers*, JJ.) GOVINDARAJULU NAIDU *v.* RANGA RAO.
40 M L J. 124=13 L.W. 97=(1921) M.W.N. 98=62 I.C. 255=29 M L.T. 99.

———*Attachment — Effect of — Whether creates charge or confers title.*

An attachment in execution is only meant to prevent private alienation and does not create any charge in favour of decree-holder. Where one property is attached under two money-decrees, and brought to sale under the latter attachment, the sale is not affected by the prior attachment in the other suit and the attaching creditor's right to redeem the mortgage, if any, on the attached property, comes to an end. The auction-purchaser purchasing property under attachment takes it free from attachment and he gets unrestricted rights of alienation, and acquires any equity or right to redeem which the judgment-debtor may have had. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) CHIMIYAPPA THARAKAN *v.* RAMA IYER. **44 Mad. 232=40 M.L.J. 65=62 I.C. 121=(1921) M.W.N. 53.**

———*Attachment—Devisee's interest— Probate taken by Administrator-General—Latter not made party to execution—Effect of.*

In execution of a personal decree against a father, the son's share in the property was attached and the Administrator-General who had taken probate of the father's will was not made a party to the execution: *Held*, that the son's share could not be sold because the bequest in favour of the son becomes a vested interest in the legatee from the date of the father's death though the son may be entitled to receive it only in due course of administration. (*Benson and Abdur Rahim*, JJ.) ADUSUPATTI VENKATA RAO *v.* SWAMI PILLAI.
11 M.L.T. 27=(1912) M W.N. 56=13 I.C. 795=22 M.L.J. 228.

EXECUTION—Compromise decree.

———*Attachment—Liability of decree holder for improper attachment.*

The attaching creditor is responsible for all results that may follow from an improper attachment and all that a decree-holder warrants is that the property belongs to the judgment-debtor. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BRIJ MOHAN LAL *v.* MUNNI BIBI.
13 I.C. 803=14 O.C. 343.

Completion of.

———*Completion of—Money paid into Court —When execution complete.*

When money is paid into Court in satisfaction of a decree, the execution of the decree with regard to such payment is not complete till the money has been actually paid by the Court to the decree-holder. 17 M. 165; 6 A. 366; 12 A. 399, F.B., Rel. on. (*Scott*, C.J. *and Rao*, J). SADASHIV MAHADU *v.* NARAYAN VITHA.
35 Bom. 452=11 I.C. 987=13 Bom. L.R. 661.

———*Completion of—Possession.*

Execution proceedings come to an end as soon as possession has been delivered. (*Abdul Raoof*, J.) SALAMAT ALI *v.* ALI AKBAR.
55 I.C. 646.

———*Completion of—Confirmation of sale.*

Though the decree-holder-purchaser is unable to obtain possession that would not entitle him to take out further execution for that portion of his purchase-money which is represented by the property purchased by him. Execution comes to an end with the sale of the property and whether or not the auction-purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and it does not in any way affect it. (*Das and Adami*, JJ.) TRILOKE NATH JHA *v.* BANSMAN JHA.
1 Pat L.R. 6=2 Pat. 249=(1923) Pat 300=1923 P. 22.

———*Completion of—Objection—When to be taken.*

The objection, if any, should have been taken before the Court proceeded to sell the property. The property having been sold the execution case was at an end; and it cannot now be urged that the objection to the sale is a question that arises in execution. (*Das and Kulwant Sahai*, JJ.) HIRJI JIVRAJ *v.* RAMJAS.
72 I C. 670 (1).

Compromise Decree.

——— *Compromise decree—Instalments—Default.*

Where a compromise decree in a partition suit is passed for money to be paid by instalments mentioning nothing about the default it can be executed by applying on each default. (*Banerjee*, J.) MUSTAFA BEGUM *v.* SIRAJUL NISA.
32 I.C. 693.

———*Compromise decree—Executing Court can go behind the decree.*

A Court executing a decree based on a compromise can go behind the decree and consider

EXECUTION—Compromise decree.

the terms of the compromise for a correct understanding of the decree. (*Fletcher and Richardson*, JJ.) JOYANUDDIN KHAN *v.* JAMIRUDDIN SARKAR. **37 I.C. 916 = 21 C.W.N. 835.**

———*Compromise decree—Not to be varied.*

A decree whether on consent or after contest must be executed as it stands and cannot be varied by the Executing Court in the light of subsequent events. (*Mookerjee and Roe*, JJ.) PRASANNA KUMARI DEBI *v.* SRIS CHANDRA. **33 I.C. 344 = 22 C.L.J. 561.**

———*Compromise decree— Plea of tender prior to suit.*

A plea of tender prior to suit can be raised in execution proceedings where an award is made a rule of Court. (*Ayling and Seshagiri Aiyar*, JJ.) PEDA VEERANNA *v.* GONDIMALLA VEERANNA. **(1917) M.W.N. 308 = 38 I.C. 295 = 5 L.W. 718.**

Construction of Decree.

———*Construction of decree.*

The Executing Court cannot be asked to interpret, the decree which is on the face of it clear and unambiguous, in the light of the pleadings or the record so as to give it a meaning inconsistent with its unambiguous terms. If a decree was erroneously drawn in the High Court, the High Court has inherent power to amend it in the necessary manner (*Piggott and Walsh*, JJ.) MUHAMMAD MARUF *v.* SULTAN AHMAD. **34 I.C. 344**

———*Construction of decree—Power of executing Court to clear ambiguity in decree.*

Where a decree is incomplete and ambiguous it is not the duty of the Court executing the decree to complete it and to give a definite meaning to the ambiguity. (*Knox*, J.) MUHAMMAD HASAN ASKARI *v.* NIAZ HUSAIN. **29 I.C. 213 = 13 A.L.J. 428.**

———*Construction of decree—Decree giving life estate to decree-holder.*

A decree giving life estate to the decree-holder cannot be executed after his death. (*Rafique*, J.) SHEO KARAN *v* MAHADEO SINGH. **19 I.C. 376 = 11 A.L.J. 454.**

———*Construction of decree—Decree directing a party to pay money as condition precedent to recovery of possession—Payment after appeal—Right, if forfeited.*

Where a decree directs a party to pay a certain sum to another as a condition precedent to recovery of possession and provides that on default the right to recover is forfeited, and where the party pays within the same period from the decree of the Appellate Court and not from the decree of the trial Court he does not forfeit the right to recover possession. (*Scott*, C.J. *and Hayward*, J.) SATVAJI BALAJIRAO *v.* SAKHARLAL ATMARAM. **39 Bom. 176 = 26 I.C. 754 = 16 Bom. L.R. 778.**

———*Construction of decree—Decree operative or not—Jurisdiction.*

EXECUTION—Construction of decree.

An executing Court can determine whether the decree which it is asked to execute is a subsisting and operative decree and can refuse execution if the decree is not operative. (*Chatterjee and Walmsley*, JJ.) UGRA NARAIN SINGH *v.* BASAN NARAYAN SINGH. **17 C.W.N. 868 = 19 I.C. 630 = 18 C.L.J. 209.**

———*Construction of decree—Addition to terms.*

A decree must be executed as it stands and the decree must be self sufficient. Where a decree was silent as to interest, no interest can be claimed by decree-holder, he should apply for amendment of the decree. (*Mookerjee and Beachcroft*, JJ.) BHIKARI SUKUL *v.* GADADHAR RAMANUJ DAS. **16 C.L.J. 686 = 15 I.C. 735 = 17 C.W.N. 87.**

———*Construction of decree.*

Executing Court will execute a decree as it finds it and not as the parties understand it. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) LODD GOVIND DOSS *v* RAJAH OF KARVETU NAGAR. **30 I.C. 357 = 29 M.L.J. 219.**

———*Construction of decree — Conflicting description of same property—Selection.*

Where the mortgaged property is described in such a way in the decree that one description applies to one set of existing facts and another to another set of facts the Court must ascertain from the record or other evidence to which property the decree was intended to apply. Of the two descriptions that which is more certain, stable and the least likely to have been mistaken, must prevail. (*Kanhaiya Lal and Kendall*, A.J. Cs.) GANGA PRASAD *v.* SUBHA CHAND. **23 I.C. 704 = 17 O.C. 256 = 1 O.L.J. 564.**

———*Construction of decree.*

An Executing Court has power to construct the decree in accordance with law. (*Jwala Prasad and Ross*, JJ.) RAM BHUJAMAN PRASAD SINGH *v* RAM NARAIN. **65 I.C. 224 = 2 Pat. L.T. 396.**

———*Construction of decree—Suit against two defendants but decree against one only—Appeal — Decree against both defendants—Effect.*

A instituted a suit against B and C. The first Court granted a decree against B and dismissed the suit against C. A appealed and pending the appeal executed the decree of the Lower Court against B. In the High Court he got a decree against C also and took out execution proceedings against B and C. C contended that he must be given credit to half the amount already recovered from A. *Held*, that C's contention cannot prevail inasmuch as the money was recovered at a time when there was no decree against C and that the amount should be deemed to have been recovered on account of the separate liability of B. (*Chamier*, C.J. *and Jwala Prasad*, J.) BAKSH BINDESHARY *v.* DHENINDER DAS. **39 I.C. 662 = 2 Pat. L.J. 162.**

EXECUTION—Construction of decree.

———*Construction decree—Award.*

An award decree which directed absolutely to make a payment of Rs. 500 within three months and thereon absolutely to be ejected from the house, could be paid voluntarily at any time within three months but thereafter would be enforceable by execution. (*Hayward*, J.C. *and Boyd*, A.J.C.) HOONDRAJMAL CHATOMAL *v.* DHANOOMAL CHOTOMAL.
2 I.C. 932=8 S.L.R. 58.

———*Decree binding—Validity—Not to be questioned.*

It is true that an Executing Court cannot go behind the decree and must execute it as it finds it, and it is also true that ordinarily it is open to the mortgagee decree-holder, to recover the whole of the money from any part of the mortgaged property; but if the vesting of part of the equity of redemption in the mortgage debt is tantamount to discharge or satisfaction of the proportionate part of the mortgage debt there is no reason why an Executing Court should not recognise it and go into the extent to which the decree has been satisfied. (*Tudball and Sulaiman*, JJ.) SARJU KUMAR MUKERJEE *v.* THAKUR PRASAD.
42 All. 544=18 A.L.J. 690=58 I.C. 743=2 U.P.L.R. (All.) 174.

———*Decree binding—Terms not to be questioned.*

A Court executing a decree is bound to execute it as it stands. (*Bannerji and Ryves*, JJ.) NURUDDIN KHAN *v.* PRANKISHAN CHAKRAVARTI. **40 All. 689=47 I.C. 16=16 A.L.J. 630.**

———*Decree binding—Error in—Misdescription of property—Jurisdiction to correct decree.*

The property mortgaged was misdescribed in the decree ordered to be sold as *muafi* while the property was in fact assessed to revenue. When the mortgagee applied for execution of his decree, the objector who had purchased the same property in execution of a simple money decree pleaded that there was no *muafi*. *Held* that the misdescription not having deceived the objector when he purchased, the Court was not debarred from correcting the error in the decree. (*Tudball and Rafique*, JJ.) BASANTI *v.* KUNJ BEHARI LAL. **44 I.C. 998=16 A.L.J. 262.**

———*Decree binding.*

A Court executing a decree can only execute it as it stands; hence if the decree is not in conformity with judgment, the person interested should bring it into conformity with the judgment. (*Richards*, C.J.). RAM NATH TEWARI *v.* MUSAMMAT GENDA. **31 I.C. 864.**

———*Decree binding—Executing Court, if can go behind decree.*

The Executing Court cannot go behind the terms of the decree. (*Piggott*, J.) PARSOTTAM DAS *v.* KESHO SARAN. **24 I.C. 206.**

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———*Decree binding—Court, if can go behind decree.*

An Executing Court cannot go behind a valid decree. (*Karamat Husain and Tudball*, JJ.) GOBARDHAN SAHI *v.* MAHABIR SINGH.
34 All. 321=14 I.C. 506=9 A.L.J. 290.

———*Decree binding.*

The Executing Court cannot go behind the decree and enter into its merits or demerits. Its only functions are to carry out the directions in the decree as they are. (*Macleod*, C.J. *and Shah*, J.) GUMARIJI *v.* VISWANATH.
23 Bom. L.R. 1072=46 B. 243=1922 Bom. 195.

———*Decree binding—Executing Court cannot go behind decree.*

The Court executing a decree cannot deal with the question whether the decree should stand or should be set aside. (*Macleod*, C.J. *and Fawcett*, J.) RAMCHANDRA GOVIND *v.* JAYANTA RAOJI. **45 Bom. 503=59 I.C. 715=22 Bom. L.R. 1409.**

———*Decree binding—Jurisdiction—Not to be questioned.*

A Court executing a decree cannot under O. 21, R. 7, question the jurisdiction of the Court that passed the decree. (*Scott*, C.J. *and Batchelor*, J.) HARI GOVIND *v.* NARSINGH RAO. **38 Bom. 194=23 I.C. 123=16 Bom. L.R. 26.**

———*Decree binding—Rent decrees—Sale of property under earlier—Subsequent decree if can be executed personally.*

Where two compromise decrees for rent were passed against the tenant which provided for sale of the tenure and under the earlier decree the property was sold, and then the decree-holder applied to execute the second decree against the person of the debtor; *Held*, in execution proceedings the Court cannot go behind the decrees, but if possible give effect to both; the second decree having been passed before the sale, the sale must be deemed to have taken place subject to the second decree, and hence the decree-holder must proceed in the first instance against the property itself. (*Woodroffe and Ghose*, JJ.) RATAN LAL BISWAS *v.* NAFAR CHANDRA PAL. **26 C.W.N. 708=1922 Cal. 571.**

———*Decree binding.*

An executing Court is not to the Court to decide whether a particular amendment of a decree is *ultra vires* or otherwise. (*Greaves and* B. B. *Ghosh*, JJ.) RAJAKOTI KUMAR MUKERJI *v.* TINCOWRI CHAKRABURTI.
1922 Cal. 136 (2).

———*Decree binding—Court cannot go behind order—Insolvency Court.*

Where the holder of a mortgage-decree against an insolvent was a consenting party to a composition sanctioned by the Insolvency Court, the Executing Court dealing with an application for execution of the mortgage-

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decree cannot go behind the order passed in those proceedings unless the proceedings in the insolvency Court are set aside. (*Chatterjea and Panton*, JJ.) JUGMOHAN PRADHANI *v.* INDRA CHANDRA. **59 I.C. 95.**

———*Decree binding—Objection to, validity of.*

An objection taken to the execution of a mortgage decree could not be entertained in execution and the decree must be executed as it subsists. (*Teunon and Beachcroft*, JJ.) HARENDRA *v.* PABNA MODEL CO. **55 I.C. 256.**

———*Decree binding—Objection to, validity*

A decree absolute in mortgage suit passed in the presence of both the parties and on proper adjudication cannot be impeached in execution on the ground that it should not have been made absolute as an application for its execution had become time-barred. (*Fletcher and Huda*, JJ.) SHAMA CHAND MAITI *v.* BAIKUNTHA NATH MANDAL. **47 I.C. 143.**

——*Decree binding—Ineffective by reasons of events subsequent.*

An objection that a decree for ejectment previously obtained can no longer be executed by reason of events subsequent, can properly be taken in execution of decree. (*Mookerjee and Cuming*, JJ.) SYAM MANDAL *v.* SATI NATH BANNERJEE. **44 Cal. 954=21 C.W.N. 776=18 I.C. 493=24 C.L.J. 523.**

———*Decree binding—Objection to legality of—Lunatic—Not properly represented.*

Any order and judgment though erroneous, is good until discharged or declared inoperative. The Executing Court cannot go into the validity or propriety of the decree. A proceeding to enforce a judgment is collateral to the judgment itself and therefore no enquiry into its irregularity or validity can be made in such a proceeding. A judgment against a person who was a lunatic at the time of trial, and yet was not represented by a legal guardian, is not to be impeached in execution but should be reversed or annulled in some special suit taken for that purpose. 31 A. 573, Ref. (*Mookerjee and Cuming*, JJ.) KALIPADA SARKAR *v.* HARI MOHAN. **44 Cal. 627=24 C.L.J. 375=35 I.C. 856=21 C.W.N. 1104.**

———*Decree binding—Compromise decree.*

An Executing Court can go behind the terms of a compromise decree, to see if the compromise contained a penalty. (*Holmwood and Imam*, JJ.) JAMIR FAKIR *v.* RAM LAL GHOSE CHOWDHURY. **32 I.C. 697.**

——*Decree binding—Validity not to be questioned in.*

In execution proceedings it is not open to a party to challenge the validity of a decree. An Executing Court has no power to go beyond the decree and cannot entertain any objection as to the legality or correctness of the decree. A decree binds the parties till set aside by appropriate proceedings. (*Mookerjee and Beachcroft*, JJ.) RAMA PRASAD ROY CHOWDHURY *v.* ANUKUL CHANDRA ROY CHOWDHURY. **27 I.C. 444=20 C.L.J. 512.**

EXECUTION—Decree Binding.

——*Decree binding—Invalid decree—Want of jurisdiction.*

It is not open to a Court of execution to consider the validity of the decree of which execution is sought and the judgment-debtor cannot in execution proceedings object that the decree has not been passed by a Court of proper jurisdiction. (*Mookerjee and Caspersz*, JJ.) BISWA NATH PRASAD *v.* BHAGWANDIN. **10 I.C. 536=14 C.L.J. 648.**

———*Decree binding—No power to go behind decree.*

The Court executing a decree must take it as it stands. It has no power to go behind the decree, in other words, it cannot entertain any objection as to the legality or correctness of the decree, the reason being that a decree, though it may not be according to law, is binding and conclusive between the parties if not appealed from. (*Broadway*, J.) RAM DAS *v.* S. P. NITTO. **64 P.L.R. 1922=67 I.C. 763=4 U.P.L.R. (Lah.) 93.**

———*Decree binding.*

An Executing Court cannot entertain any objection as to the legality or correctness of the decree. The fact that the decree is difficult to execute does not render it incapable of execution. (*Broadway and Moti Sagar*, JJ.) JIWAN MAL *v.* NANAK CHAND. **63 I.C. 975.**

———*Decree binding.*

The Court of execution has to execute the decree as it stands and it is not open to the parties to impeach the validity of the correctness of the decree. (*Shadi Lal*, J.) KORA LAL *v.* PUNJAB NATIONAL BANK LTD. **55 I.C. 816=118 P.L.R. 1920=2 U.P.L.R. (Lah.) 91.**

———*Decree binding—Legality of decree not to be questioned.*

An Executing Court cannot question the legality of the decree. The remedy is by suit. 35 P.R. 1900; 23 All. 181; 60 P.W.R. 1908, Foll. (*Wilberforce*, J.) HAR GOPAL *v* RAM RICHPAL. **54 I.C. 239=60 P.L.R. 1919.**

———*Decree binding—Validity not to be questioned.*

A party cannot attack the validity of a decree in execution. The proper course of doing so is by appeal or review. (*Shah Din and Chevis*, JJ.) NARAIN DAS *v.* UDHAM SINGH. **68 P.R. 1913=44 P.L.R. 1913=18 I.C. 48=53 P.W.R. 1913.**

———*Decree binding—Decree—Validity of—When open to question in Executing Court—Remedy by suit.*

An Executing Court cannot go behind the decree or enquire into the jurisdiction of the court which passed the decree. 43 M. 675, foll.

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44 C. 627, not foll. Where after the preliminary decree is passed the mortgagor dies and without bringing on record his legal representative a final decree is passed, the decree is a nullity and its validity can be impeached in a subsequent suit for declaration and injunction, 13 L.W. 290; 21 A. 16; 4 Pat. L.J. 240, Ref. (*Ayling and Odgers*, JJ.) SAWMI MUDALIAR *v.* MUTHIAH CHETTY. **16 L.W. 314 = 43 M.L.J. 293 = (1922) M.W.N. 597 = 1923 M. 212.**

———*Decree binding—Jurisdiction—Territorial—Objection to.*

Though S. 21, C.P.C., might not apply, a decree could not be questioned in execution on the ground of want of territorial jurisdiction, because it is not for the Executing Court to go into questions of the jurisdiction of the Court which passed the decree, at any rate when that was an ordinary Court in British India governed by the C.P. Code. (*Wallis*, C.J. *Ayling and Coutts-Trotter*, JJ.) ZEMINDAR OF ETTIYAPURAM *v.* CHIDAMBARAM CHETTAR. **39 M.L.J. 203 = 28 M.L.T. 78 = 43 M. 675 = (1920) M.W.N. 460 = 12 L.W. 217 = 58 I.C. 871 (F.B.) [Also 24 M.L.J. 70 = 18 I.C. 498 = 43 Mad. 885 = 53 I.C. 379 = 37 M.L.J. 442.**

———*Decree binding—Mortgage—Combined decree.*

A combined decree in a mortgage suit though irregular is not void and it is not open to the judgment-debtor to object to it in execution. 21 M.L.J. 1036; 32 M. 534; 16 C.L.J. 318, Rel. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) NARAYANA AIYAR *v.* SINGARAVELU VANNIAN. **33 M.L.J. 543 = (1917) M.W.N. 845 = 42 I.C. 282 = 6 L.W. 675.**

———*Decree binding—Objection to validity of.*

Though the decrees were not in accordance with the provisions of Transfer of Property Act, the irregularity cannot be questioned in execution proceedings. (*Seshagiri Aiyar and Kumaraswmi Sastri*, JJ.) VENKATAPERUMAL *v.* VENKATA REDDI. **39 Mad. 570 = 29 M.L.J. 96 = (1916) M.W.N. 334 = 29 I.C. 231 = 17 M.L.T. 427.**

———*Decree binding—Mortgage—Combined decree—Plea of invalidity of decree.*

A mortgage decree giving a personal remedy before the sale of the mortgaged property though irregular under S. 89, T.P. Act, cannot be questioned in execution proceedings. (*Wallis and Sadasiva Aiyar*, JJ.) KUMARA VENKATA PERUMAL RAJA BAHADUR VARU *v.* VELAYUDA REDDI. **24 I.C. 195 = 27 M.L.J. 26.**

———*Decree binding—Decree without jurisdiction—Whether can be questioned in execution proceedings.*

A decree passed without jurisdiction either pecuniary or otherwise cannot be questioned in execution proceeding, but only by way of an

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appeal. 30 M. 421; 9 M. 80; 22 B. 475, Foll; 26 M. 31; 28 M. 84; 15 B. 216; 17 A. 478; 28 B. 78, Dist. (*Sankaran Nair and Ayling*, JJ.) RATNASWAMI CHETTI *v.* RATNAMMAL. **1 L.W. 446 = 16 M.L.T. 415 = 24 I.C. 185 = 27 M.L.J. 388.**

———*Decree binding—'Personal decree'—and 'Decree for sale' combined.*

Where a Court has passed a personal decree at once against the defendant along with a decree for sale, an executing Court must execute it according to its terms, though erroneous. (*Sadasiva Aiyar and Spencer*, JJ.) MUTHUKURUPAN CHETTIAR *v.* CHINNASWAMI PILLAI. **22 I.C. 293 = (1914) M.W.N. 152.**

———*Decree binding—Jurisdiction of Court.*

(Per *Sadasiva Aiyar*, J.)—A Court executing a decree of another competent Court cannot go behind to decide the question of the jurisdiction of the Court which passed the decree. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) VEERARAGHAVA AIYAR *v.* MUGA SEIT. **(1913) M.W.N. 665 = 20 I.C. 704 = 14 M.L.T. 96.**

———*Decree binding—Propriety of, not to be questioned.*

A decree not in conformity with Sch. D, No. 7, C.P.C., is not null and void but it is only irregular. It cannot be questioned at the execution if allowed to remain unimpeached. (*Abdur Rahim and Spencer*, JJ.) RAJA OF KALAHASTI *v.* VENKATA PERUMAL. **21 M.L.J. 1036 = 10 M.L.T. 429 = 12 I.C. 689 = (1911) 2 M.W.N. 468.**

———*Decree binding—Executing Court cannot go behind.*

An executing Court cannot go behind the decree, and being bound by the directions contained in the decree, it cannot question its legality or correctness. 6 A. 269; 7 A. 102, Dist. (*Lindsay*, J.C.) SHEODARSHAN LAL *v.* ASSESSAR SINGH. **46 I.C. 52 = 5 O.L.J. 179.**

———*Decree binding—Validity of—Not to be questioned.*

It is not open to the judgment-debtor to contest in execution the validity of the provisions in a compromise decree without bringing a suit for the purpose. (*Piggott*, J.C. *and Lindsay*, A.J.C.) SHAH ALAM MIRZA *v.* WAHIDUDDAHIR MIRZA. **14 I.C. 29.**

———*Decree binding—Decree—Mistake in recitals in—Court if can go behind decree.*

Where the plaint claim is inaccurately recited in the decree the Executing Court is not bound thereby but is competent to examine the record and ascertain the actual existing circumstances. (*Miller*, C.J. *and Mullick*, J.) RAMESHWAR SINGH *v.* SUBU LALJHA. **5 Pat. L.J. 402 = 39 I.C. 25 = 2 Pat. L.T. 7.**

EXECUTION—Decree Binding.

———*Decree binding— Amendment — Construction of decree.*

An executing Court has no right to go behind the decree and in any way to add or amend the terms thereof. It has to execute the decree as it is, and any amendment thereof can be made either by review or under Ss. 151 and 152 of the C.P. Code. 28 Cal. 353; 1 P.L.W. 620; 15 I.C. 719, Foll. But an executing Court can give a fuller and more complete description of the property described in the decree, which would be a correct description on a proper construction of the decree read with the judgment and the pleadings. (*Jwala Prasad and Adami, JJ.*) BABU BAIJ NATH SAHAY *v.* GAJADHAR PRASAD. **58 I.C. 276=1 Pat. L.T. 471.**

———*Decree binding—Lunatic—No proper representation.*

Where in a suit against a lunatic the Court refused to appoint a *guardian ad-litem* for the lunatic and passed a decree against him, the representative of the lunatic after his death cannot raise an objection to the execution of the decree on the ground that it is null and void. (*Chamier*, C.J. *and Roe*, J.) JANG BAHADUR LAL *v.* PALTUR TEWARI. **45 I C. 218=1917 Pat. 165.**

———*Decree binding—Power of executing Court to go behind the decree.*

If a decree, which is not inconsistent with judgment, makes all the defendants expressly liable, the executing Court cannot exempt some from liablity. It must execute the decree as it is and cannot refuse the benefit of it to the decree-holder, though the judgment be erroneous. (19 W.R. 343, Dist.) Per *Mullick*, J. —A litigant cannot in execution proceedings raise matters which properly ought to be raised by appeal or review. Per *Jwala Prasad*, J.—If a litigant is aggrieved by a judgment he should either appeal against the judgment or apply for a review but he cannot raise in execution any question as to the interpretation of the language of the judgment when it is explicit and clear. (*Mullick and Jwala Prasad, JJ.*) DEVENDRA PRASAD *v.* RAM CHANDRA PRASAD. **39 I.C. 537=1 Pat. L.W. 620.**

———*Decree binding—Validity of, when questioned.*

On an application for substitution of the petitioner's name in the place of the decree-holder for executing the decree, the validity of the decree cannot be questioned. (*Ormond and Twomey, JJ.*) HAJEE MAHOMMED HADI *v.* JOAKIM. **32 I.C. 492=8 Bur. L.T. 216.**

———*Decree binding—Jurisdiction to pass decree—Want of.*

A decree passed without jurisdiction cannot be executed and the Court to which such decree is transferred for execution can decline to execute it. The Court charged with the execution of a decree can consider the question whether the Court which passed the decree has jurisdiction to pass it unless the decree itself precludes that question. (*Pratt J.C.*) TOPAN MUTHURAM *v.* TEK CHAND. **15 I C. 832= 5 S.L.R. 260.**

EXECUTION—Decree Null and Void.

———*Decree binding — Executing Court whether can entertain objections to the validity of decree.*

An executing Court cannot entertain any objection to the validity of a decree or an objection that a decree passed on the basis of an award is not in the prescribed form or that it infringes the provisions of the Dekhan Agriculturist's Relief Act. (*Hayward*, A.J.C.) GHULAM MURTZA KHAN *v.* CHANGOOMAL. **11 I.C. 192=5 S L.R. 71.**

Decree Null and Void.

———*Decree null and void—Powers of — Mortgage decree—Death of party.*

If a decree is passed against a dead person, the executing Court can treat it as a nullity. Where a decree for sale is objected to in execution on the ground that it was based on a preliminary decree passed against a dead person, the executing Court cannot treat the decree as a nullity, though it might be a good ground for setting aside the decree. (*Piggott and Walsh*, JJ.) RAM SARUP *v.* NARAIN DAS. **45 A. 198=9 O. & A.L.R. 131= 20 A.L.J. 1003=1923 All. 141.**

———*Decree null and void—Objection as to validity decree, ground of abatement by death of parties at date of decree.*

The Executing Court can entertain an objection that the decree, which, in this case, was the decree of the Appellate Court, had been passed at a time when the Appellant was dead and no representative of his had been impleaded within limitation, although no plea to this effect had been taken at the time of appeal. (*Piggott and Walsh*, JJ.) BINDHYA CHALSINGH *v.* NAWALRAJ. **43 All. 328= 64 I C. 927=19 A.L.J. 95.**

———*Decree null and void—Validity of decree—Power to go into—Decree passed without jurisdiction—Power of Executing Court to refuse execution.*

A decree passed by a non-agency Court for the sale of properties partly within its own jurisdiction and partly within the jurisdiction of Godavari Agency Court is a nullity regarding the lands in the Agency tracts and as the Agency Court is not governed by the Civil Procedure Code it can go behind the decree and refuse execution. (*Krishnan and Venkatasubbarao, JJ.*) KRUTHIVENTI *v.* SEETHARAMOHANDRARAJU. **(1922) M.W.N. 728=16 L W. 669= 1923 M. 114 (1).**

———*Decree null and void — Defence to execution.*

A decree passed after defendant's death without a legal representative representing him afterwards is a nullity. 13 A. 53 P.C.; 26 B. 317; 17 A. 478, Foll. The decree might

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be impeached in execution without resorting to a separate suit. (*Oldfield*, J.) SUBRAMANIA AIYAR *v.* VAITHINATHA AIYAR.
31 I.C. 198=38 Mad. 682.

———*Decree null and void—Decree against dead man.*

A final decree passed in a mortgage suit against a mortgagor who is dead at the time, though alive on the date of the preliminary decree, is void and the objection can be taken to its execution on that ground. (*Miller*, C.J., *Coutts and Manuk*, JJ.) JUNGLILAL *v.* LADDU RAM MARWARI. **4 Pat. L J. 240= 50 I.C. 529=1919 Pat. 105 (F.B.).**

Decree not to be varied.

———*Decree not to be varied—Mesne profits.*

An Executing Court cannot vary the terms of a decree. It must not deduct any sums for the mesne profits not allowed by the decree. (*Richards*, C.J. *and Bannerjee*, J.) KRISHNA PAL SINGH *v.* RANJIT SINGH.
30 I.C. 893=17 A.L.J. 510.

———*Decree not to be varied.*

An Executing Court has no power to go behind the decree even though it gives the decree-holder what he may not be entitled to under some Tenancy Acts. (*Tudball and Rafique*, JJ.) RUNG LAL KUAR *v.* KISHORI LAL. **37 All. 278= 28 I.C. 278=13 A.L J. 300.**

——*Decree not to be varied—Power of Executing Court to go behind decree.*

An Executing Court can refuse to execute a decree against defendants who were not parties to the appeal and against whom the Appellate Court granted relief but did not incorporate it in the decree. (*Chamier*, J.) BHAGWANT *v.* RAJAB. **27 I.C. 804=13 A.L J. 136.**

——*Decree not to be varied—Inherent power—Executing Court.*

The Executing Court cannot deal with the question whether a decree should stand, or whether it should be set aside on any of the grounds on which a decree can be set aside. (*Macleod*, C.J. *and Fawcett*, J.) RAMANATH MULCHAND *v.* GAJANAN PANDURANG.
45 Bom. 946=62 I.C. 96= 23 Bom. L.R. 806.

———*Decree not to be varied—Final decree in mortgage suit—Appointment of receiver—No power to vary.*

The method provided in a final decree for execution cannot be altered at the instance of the judgment-debtor and to the prejudice of the decree-holder. The right of the mortgagee under the decree cannot be interfered with the Court in any way either by intercepting the rents and profits or by restraining the sale of the property by the appointment of the receiver. (*Fletcher and N. R. Chatterjee*, JJ.) SITA NATH SAHA *v.* MADAN MOHAN DAS.
43 I.C. 22.

EXECUTION—Decree not to be varied.

———*Decree not to be varied.*

An Executing Court must execute the decree as it stands; it cannot alter, vary or add to the terms of the decree; the propriety or validity of the decree cannot be discussed in execution proceedings. 27 C. 95; 28 C. 353; 3 C. 161, 8 C. 332, Rel. Even the Judge making the decree deal with an application for execution of a decree be the Judge who made the decree, he cannot amend it if he has to deal with it in execution proceedings. (*Mookerjee and Carnduff*. JJ.) MADAN MOHAN NATH *v.* BHIKHA SHAHU. **15 I.C. 719=16 C.L.J. 517.**

———*Decree not to be varied—Execute decree as it stands or refuse execution.*

An Executing Court cannot tamper with decrees which must be executed literally; when a decree cannot be executed literally it cannot be executed at all. (*Chevis*, J.) KHWAJA MAHMUD *v.* GHULAM RASUL.
44 I.C. 530=59 P.W.R. 1918.

———*Decree not to be varied—Partition based on award—Separate suit to determine liability on mortgage, maintainability of.*

Where an award and the decree based thereon for partition of immoveable property do not state the encumbrance created thereon by one of the parties who are father and sons and where the mortgagees are no parties to the proceeding, the Executing Court cannot decide in execution of the decree, the respective liabilities of the parties as regards the mortgage. Such a question can be decided by a separate civil suit. (*Le Rossignol*, J.) NARPAT RAI *v.* DAVI DAS. **59 P.W.R 1915= 29 I.C. 755=139 P L R. 1915.**

———*Decree not to be varied.*

A rent decree transferred for execution to a Civil Court is to be executed according to C. P. Code. The Court cannot go behind the decree and enforce claims not expressly mentioned therein nor can it assume the powers conferred on Revenue Courts only. (*Sadasiva Aiyar and Spencer*, JJ.) BOLLAPRAGADA VENKATALAKSHMANA GARU *v.* NANDA SEETAYA.
11 L.W. 466=(1920 M.W.N. 294= 39 M.L.J. 30=43 M. 786= 57 I.C. 764=28 M L.T. 44.

———*Decree not to be varied—Additional amounts—Decree-holder's right.*

No addition can be made by a Court executing a decree beyond such as the decree directs other than the costs arising out of the execution proceeding. (*Kanhaiya Lal*, A.J.C.) DELHI AND LONDON BANK, LTD. *v.* RAM RATAN. **32 I.C. 754=2 O.L.J. 611.**

———*Decree not to be varied—Variance between preliminary and final decree as to rate of interest—Rights of judgment-debtor.*

A judgment-debtor cannot object in execution proceedings to the validity of the final decree on the ground that the direction to pay interest at a certain rate is in excess of the preliminary decree which directed that interest

XECUTION—Decree not to be varied.

should run at the current rate. (*Chapman and Jwala Prasad*, JJ.) BRIJ RAJ KISHUN *v.* RAMESHWAR SINGH. **39 I.C. 925=1917 Pat. 212**

———*Decree not to be varied—Interpretation of decree.*

As long as a decree stands, the Court executing it can only construe the decree and cannot consider its merits. 11 B. 537 ; 28 C. 353 Rel. On an application for execution, a Court cannot read into a decree a provision not contained in it merely because such an opinion might be expected. 19 M. 249, Ref. If a decree is ambiguous, its interpretation consistent with law will be preferred to one contrary to law. (*Hayward*, J.C. *and Cohen*, A.J C.) TOTAL DAS *v.* UTUMAL. **10 I.C. 975=4 S.L.R. 244.**

Duty of Court.

———*Duty of Court.*

Execution Court has no powers to include costs claimable in final decree. (*Ryves and Gokul Prosad*, JJ.) DAMBAR SINGH *v.* KALLYAN SINGH. **20 A.L.J. 170=44 A. 350=1922 A. 27.**

———*Duty of Court—Instalment decree—Payments under Appropriation — Barred instalment.*

Where money is payable in instalments under a decree and on default of payment of two consecutive instalments, the decree-holder is given the right to sell the property, it would be the duty of the Court when instalments are paid, to appropriate them to the earliest instalment unpaid. The debtor cannot allow such earlier instalments to remain unpaid unless at the time he makes the payment the instalment was already barred by limitation. (*Macleod*, C.J. *and Coyajee*, J.) HANMANT TIMAJI DESAI *v.* RAGHAVENDRA RAO. **46 Bom. 848=24 Bom. L.R. 410=1922 Bom. 237.**

———*Duty of Court—Powers of—Not to nullify the effect of decree but to give effect to it.*

The executing Court has no powers to nullify the effect of decree but to give effect to it. (*Woodroffe and Ghose*, JJ.) RATAN LAL *v.* NAFAR CHANDRA. **26 C.W.N. 708=1922 Cal. 571.**

———*Duty of Court—Not to alter or amend decree but to execute it as it stands.*

It is the duty of an executing Court to look in the first instance at the decree and if the terms of the decree are clear and unambiguous, an executing Court is bound to give effect to it, even though it may regard it as erroneous. (*Leslie Jones and Broadway*, JJ.) KAKA SINGH *v.* LACHMAN DAS. **67 I.C. 740=3 L.L.J. 263.**

———*Duty of Court—Decree to be executed as it stands.*

It is the duty of the executing Court to execute the decree as it stands and it is open to

EXECUTION—Ex parte order.

the Court to direct something to be done not directed by the decree on the ground that literal compliance with the decree was impossible. An executing Court has no right to direct a decree-holder build a bund at any point other than that provided by the decree. (*Scott-Smith*, J.) ALI MAHOMED *v.* JAHAH KHAN. **65 I.C. 126.**

———*Duty of Court—Person not party to decree, if can object.*

The executing Court's only duty is to execute the decree according to its terms and it is not for that Court to say that the decree is not binding on the property, in the absence of certain parties, nor can the Court entertain any objection to the execution by a person who is not a party to the decree. (*Abdul Rahim and Sadasiva Aiyar*, JJ.) GUNUPATTI NARASA REDDI *v.* MAKKENA KONDAP NAIDU. **61 I.C. 759=13 L.W. 148.**

———*Duty of Court—Plea of payment to transferee decree-holder.*

The District Judge should have allowed the judgment-debtor to prove that the payments certified were made to a person entitled to execute the decree and should have decided whether the transfer really conveyed to the transferee the interests of the transferor. (*Miller and Sadasiva Aiyar*, JJ.) BALKRISHNA PILLAI *v.* V. MINI REDDI. **14 I.C. 702.**

———*Duty of Court—Equities as between judgment-debtors.*

The Court executing the decree has nothing whatever to do with the equities arising in the case between the judgment-debtors. (*Piggott*, J.) MAZAHAR ALI KHAN *v.* HUSSAINI JAN. **18 I.C. 312.**

Equitable Execution.

———*Equitable execution—Receiver.*

A mortgagee of a factory obtained a mortgage decree and the factory was about to be sold in execution, when the judgment-debtor applied for the appointment of a Receiver on the ground, that the sale of factory would ruin him. The Court with the consent of the decree-holder appointed a Receiver who was to work the factory. The appointment of a Receiver did not operate by way of equitable execution but was rather a partial and somewhat irregular 'execution' of the mortgage decree by consent of parties. (*Richards*, C.J. *and Banerjee*, J.) JHUNKOOLAL *v.* PEARY LAL. **39 All. 204=38 I.C. 613=15 A.L.J. 49.**

Ex parte Order.

———Ex parte *order.*

Where a payment of decretal amount was made out of Court to persons other than decree-holder, the decree-holder's application for refund of the money should be treated as one to set aside the *ex parte* order. (*Walsh and Stuart*, JJ.) BITHAL DAS *v.* JIWAN RAM. **20 A.L.J. 353=1922 All. 190.**

EXECUTION—Ex parte order.

———Ex parte *order—Effect.*

An *ex parte* order made against a party having no opportunity to be heard is liable to be revoked at his instance and the Court has inherent power to give direction to that effect. (*Mookerjee and Cuming*, JJ.) SYAM MANDAL *v.* SATI NATH BANNERJEE. **44 Cal. 954 = 24 C.L.J. 523 = 38 I.C. 493 = 21 C.W.N. 776.**

———Ex parte *order—Omission to record service of notice on judgment-debtor—Irregularity.*

The omission by a Court to record service of notice on judgment-debtor is a serious irregularity; but a mere ground that the Court did not write an express order that service of the notice was only effected, would not vitiate all subsequent proceedings. *Quaere*:—Whether notice under O. 21, R. 22 stands on the same footing. (*Sadasiva Aiyar and Spencer*, JJ.) MAHOMED MERA ROWTHER *v.* KADIR MERA ROWTHER. **22 I.C. 302 = (1914) M.W.N. 63.**

Final Decree.

———*Final decree—Appeal time, expiry of.*

A decision cannot be said to be final until the time for the lost appeal allowed has expired or if appealed, it has become final by the decree of the High Court. 1 A. 132, Foll.; 1883 A.W.N. 6 Dist. (*Walsh*, J.) RAMAUTAR SHUKUL *v.* BHAGELU SAHAI. **34 I.C. 204.**

———*Final decree—Appeal—Affirmance.*

Even when the decree of the Appellate Court affirms the decree against which the appeal is filed it is the final decree in the case and as such the only decree capable of enforcement in execution. 16 W.R. 1, Foll. (*Mookerjee and Beachcroft*, JJ.) SHAMANAND DAS CHOUDHURY *v.* RAM KANT DAS. **16 I.C. 945.**

Foreign Decree.

———*Foreign decree—Executability.*

A decree passed in a foreign Court, to which a person voluntarily submitted, is capable of execution and can on transfer be executed in the Court within whose jurisdiction he resides. (*Scott*, C.J. *and Shah*, J.) HARCHAND PANJI *v.* GULAB CHAND KANJI. **39 Bom. 34 = 26 I.C. 265 = 16 Bom. L.R. 620.**

Joint Decree.

———*Joint decree—Application for execution by one decree-holder—Purchase by permission—Right of other decree-holders.*

Where one of several decree-holders applied for the execution of a decree for sale, on his behalf and on behalf of other decree-holders and with permission purchased the property for a sum equal to the amount of his share and consequently the other joint decree-holders sued him to recover their shares. *Held*, that equity being on their side they were entitled to recover their share. (*Knox, Banerji and Richards*, JJ.) KESRI *v.* GANGA SAHAI. **8 A.L.J. 616 = 11 I.C. 517 (2) = 33 A. 563.**

EXECUTION—Jurisdiction.

———*Joint decree—Release of one of several judgment-debtors—Effect.*

A release of one of several judgment-debtors does not discharge the others from liability. (*Mookerjee and Carnduff*, JJ.) BHAWANI KOER *v.* DARSAN SINGH. **11 I.C. 450 = 14 C.L.J. 384.**

Jurisdiction.

———*Jurisdiction—Competency to object to sale in execution.*

A judgment-debtor can object to the execution proceedings on the ground that under law the Court is precluded from selling an occupancy holding, and that the Court should carry out the provisions of law and not to act in violation thereof. (*Banerji, Rafique and Ryves*, JJ.) KATWARI *v.* SITA RAM TEWARI. **43 All. 547 = 19 A.L.J. 473 = 63 I.C. 264 = 3 U.P.L.R. (All.) 99.**

———*Jurisdiction—Power of Court to which decree has been transferred for execution.*

The Court to which a decree is sent for execution retains its jurisdiction to execute the decree until the execution has been withdrawn from it or until it had fully executed the decree and had certified that fact to the Court which sent the decree, or until it had failed to execute the decree and certified that fact to the Court which forwarded the decree. (*Macleod*, C.J. *and Crump*, J.) VITHU DAULATA *v.* GANESH. **23 Bom. L.R. 453 = 1923 Bom. 396.**

———*Jurisdiction—Objection to the validity of a decree.*

The validity of a decree cannot be objected to in execution proceedings following such decree though the Court in passing has contravened some provision of law. (*N.R. Chatterji and Newbould*, JJ.) HEMCHENDRA CHOUDHRY *v.* CHANDRA MOHAN NAMODAS. **60 I.C. 204 = 24 C.W.N. 1070.**

———*Jurisdiction—Payment order—Stay of.*

When the money was received by the Lahore Branch of the Bank from the Kasauli Branch where it was attached by order of execution Court of Lahore as the agent of the decree-holder. *Held*, the money when received by the Bank in Lahore belonged to the decree-holder and it is no longer within the jurisdiction of the execution Court in Lahore to deal with it in any way, *e.g.*, issuing prohibitory order for not paying to decree-holders. (*Scott-Smith*, J.) FITZHOLMES *v.* WARYAM SINGH. **1923 Lah. 514.**

———*Jurisdiction—Objection to.*

Objection to a legality of a decree can be raised in execution. (*Mullick*, J.) ISHAN CHANDRA KUNDU *v.* NIL RATAN ADHIKARI. **4 Pat. L.T. 311 = 1 Pat. L.R. 217 = 2 P. 538 = 1923 Pat. 184 = 1923 P. 375.**

EXECUTION—Jurisdiction.

———*Jurisdiction—Concurrent execution—Legality of—Execution in several Courts.*

Both under the Civil Procedure Code of 1908 and the previous C.P. Code the legality of the concurrent execution has been recognised though in practice it is not generally carried out. On principle there is no difference between a concurrent execution after transfer in another Court and a concurrent execution in the Court in which the decree was passed. That the present C.P. Code does not view with disfavour concurrent executions is among other sections indicated by S. 46. Further separate and successive applications for execution giving reliefs of different character may always be made. 8 Cal. 687; 1 C.L.J. 315; 37 M 232; 18 C. 515; 19 A 98 referred to. (*Mullick and Kulwant Sahay*, JJ.) RAM SUMRAN PRASAD *v.* BABU RAM BAHADUR. **4 Pat. L.T. 99 = 2 Pat. 328 = 1923 Pat. 61 = 1923 P. 224.**

———*Jurisdiction.*

If the Court persists in selling property of the judgment-debtor in spite of the prayer of the decree-holder not to proceed with execution, it acts without jurisdiction. (*Jwala Prasad and Ross*, JJ.) CHOUDHARY RAM PRASAD RAI *v.* MAHESHKANT CHOWDHARY. **3 P.L.T. 445 = 1 P. 232 = 1922 P. 525.**

Legal Representatives.

———*Legal representatives — Objection by one of the substituted heirs as to liability—Whether Executing Court can decide the objection.*

After the death of judgment-debtor his minor son and brothers were substituted in his stead, the brother made an objection petition refusing liability: Lower Court refused to go into objections but Higher Court *held* the objections were valid. (*Jawala Prasad*, C.J., *and Ross*, J.) PATAIT DINANATH SAHIB *v.* PATAIT MALHIHI BAID. **1921 Pat. 293.**

———*Legal representative—Decree not to be questioned.*

The legal representative of mortgagor judgment-debtor are estopped from questioning the correctness of an order absolute for sale passed against the judgment-debtor during his life-time. (*Jwala Prasad and Coutts*, JJ). KESHAWESARINDAR SHAI *v.* DEWBENDRA BALA DASSI. **4 Pat. L J 213 = 48 I.C. 245 = (1919) Pat. 121.**

Liability of Judgment-Debtor.

———*Liability of judgment-debtor—Negligence—Damages.*

A decree-holder cannot make the judgment-debtor liable in execution proceedings for negligently allowing the decreed house to be burnt down. (*Sadasiva Aiyar and Moore*, JJ). RAMU SHETTITHI *v.* MANNIAPPA SHETTITHI. **33 I.C. 520**

EXECUTION—Mesne profits.

Limitation.

———*Limitation — Affirmance of original decree by appellate Court—Time runs from ultimate decree.*

Where the trial Court decrees the suit and the High Court and the judicial committee affirm the decree, time runs from the date of the ultimate decree. (*Mookerjee and Panton*, JJ.) RAJA SASIKANTA ACHARYA *v.* SARAT CHANDRA RAI. **70 I C. 6 = 34 C.L.J 416.**

———*Limitation*—Terminus a quo.

Where an order granting with costs of petition to set aside an *ex parte* decree was passed on 27—2—1915 and a "rubkari" specifying the costs was drawn up on 8—3—1915 and execution for the costs was applied for on 6—3—1918: held, that the "rubkari" was not a decree within S. 2 (2) of the Code but was only an order within S. 2 (14) of the Code which completed and rendered the order of the 27th February 1915 capable of execution and that limitation commenced to run from 8—3—1915 and therefore the application was in time. (*Teunon and Beachcroft*, JJ.) NOOKUR CHANDRA MULLICK *v.* RAJANI KANTA GHOSE. **39 I.C. 51 (2).**

———*Limitation—Decree providing for a default—Default occurring after 20 years—Bar.*

Where a decree-holder is entitled to execute his decree, only on a default, as provided in the decree, he is not debarred from executing the decree, when the default occurs for the first time. (*Oldfield and Ramesam*, JJ.) ANDAL AMMAL *v.* VIJIA NAIDU. **14 L.W. 632.**

———*Limitation—Failure to plead in the previous application—Effect of.*

Where in the course of a previous execution proceeding, it was open to the judgment debtor to plead limitation, but he failed to do so, he would be precluded from raising the same in a subsequent application which is within time from the prior application. 8 Cal. 51; 24 Mad. 669, foll. (*Kanhaiya Lal*, C.J.) GANGA DIN *v.* DIP SINGH. **20 O C. 13 = 1922 Oudh. 117.**

Mesne Profits.

———*Mesne profits—Decree for interest—Power of executing Court to award interest at Court rate.*

Where a decree grants mesne profits but says nothing about interest the executing Court has power to award interest at Court rate. (*Walsh and Stuart*, JJ.) LALTA PRASAD *v.* SRI GANESHJI. **20 A L J. 348 = 1922 All. 117.**

———*Mesne profits—Interest on—Order of the lower Court.*

Where a decree under execution does not award any interest on mesne profits, either before or after the decree, the order of the Court below, in so far as it awards interest, is illegal and must be set aside (*Walsh and Sundar Lal*) TEJ BEGAM *v.* SARVI BEGAM. **37 I.C. 674 = 14 A.L.J. 1171.**

EXECUTION—Mesne profits.

———*Mesne profits—Delivery of possession—Notice to deliver possession, whether necessary.*

Where a decree provides for mesne profits till date of delivery there is no delivery of possession until notice to that effect is sent to the plaintiff. The mere filing of a petition by the defendant that the plaintiff may take possession is not tantamount to delivery. (*Ayling and Sundara Aiyar*, JJ.) MADLACHI RAM *v.* BRUNDAVARAM. **12 I C. 272 = (1911) 2 M W.N. 258.**

Mode of.

———*Mode of Decree — Satisfaction in part—Execution as regards rest.*

Though a decree for sale, is passed it is open to the mortgagor to satisfy the decree in whole or in part and in the latter case the executing Court after ascertaining if there has been satisfaction can direct execution only as to the balance. (*Piogott and Walsh*, JJ.) SAHU PARSHOTTAM SARAN *v.* BRAHMA NAND. **21 A.L.J. 818 = L R 4 A. 574 = 1924 All. 297.**

———*Mode of—Restrictions contained in pattah.*

Where a decree for arrears of rent does not restrict the decree-holder to execute the decree in any particular manner, the decree may be executed in any way the decree-holder chooses though there are restrictions in the *pattah*, which has not been embodied in the decree. (*Teunon and Pearson*, JJ.) RAJANI KANTA ROY *v.* ANANDI KINKAR ROY. **62 I C. 711**

———*Mode of—Satisfaction of a decree—Land belonging to a member can be alienated.*

A Civil Court can order the temporary alienation of the land of a member of an agricultural tribe in satisfaction of a money decree. (*Scott-Smith and Dundas*, JJ.) SAIN DITTA *v.* NUR AHMAD. **74 I C. 194 = 4 L.L.J. 476.**

———*Mode of—Right of decree-holder.*

The decree-holder is entitled to all the remedies against the judgment-debtor who can be exempted from arrest only on exceptional circumstances. (*Seshagiri Aiyar*, J.) KOTHANDARAMAN CHETTY *v.* SHUNMUGAM CHETTY. **32 I.C. 608.**

Right to.

———*Right to—Re-sale—Separate mortgage-bonds—Decree—Sale—Properties sold together—Re-sale before possession necessary.*

The whole matter arose out of a decree on three mortgage-bonds, where sale of all properties together had already taken place: the High Court held, on an objection by one of the transferees of the judgment-debtor, that one sale was objectionable and that each property separately mortgaged ought to have been separately sold. The decree-holder who was also auction-purchaser applied as auction-purchaser and absolute owner for possession ignoring the direction of the High Court. *Held*, that the decree-holder who was held up in his proceedings ought to be allowed to persue his alternative remedy in accordance with the judgment of the High Court, or, in other words, to apply alternatively, by way of amendment of his application, for an order for re-sale of the properties separately in accordance with the High Court direction. (*Walsh and Ryves*, JJ.) HARBANS NATH TEWARI *v.* ACHARJI NATH. **65 I.C. 16 = 3 U.P.L.R. (All.) 52.**

EXECUTION—Right to.

———*Right to.*

Where S obtained a decree against D, B. and C and D in execution of a decree which he had against S realised the whole amount of S's decree from B and C and S became an insolvent and his assets including the decree were purchased by G who sought to execute the decree. *Held*, that the decree having been finally executed by D, G could recover nothing under it. (*Richards*, C.J. *and Banerjee*, J.) GHULAM MOHIUDDIN *v* DAMBAR SINGH. **40 All. 206 = 46 I.C. 661 = 16 A.L J. 109.**

———*Right to—Decree on award—Court-fees.*

Where a proper complete decree had been drawn up on the award and the execution Court dismissed the application for execution on the ground that there was no decree as no necessary Court-fees had been paid: *held*, the order dismissing the application for execution was wrong. (*Shah and Crump*, JJ.) GANDHI VADILAL *v.* GANDHI MANEKLAL. **1923 Bom. 41 (2).**

———*Right to.*

Deft. has a right to apply for execution of a decree for specific performance. (*Macleod*, C.J. *and Coyajee*, J.) KARIMABIBI DANBHAI *v.* ABDEREHMAN SAYAD BANU. **24 Bom. L.R. 496 = 46 B. 990 = 1923 B. 26.**

———*Right to—Partition decree—Right of deft. to carry on pending execution.*

Where the plff. applies for execution of a partition decree but proposes to drop the execution proceedings on the building which was the subject of the partition being burnt down, it is open to the deft. to insist on the execution being carried on and the site being divided and put in possession of the parties according to the decree. (*Macleod*, C.J. *and Coyajee*, J.) OHUNI LAL JAMNADAS *v.* MUL CHAND HARJIBANDAS. **24 Bom. L.R. 440 = 1923 Bom. 23.**

———*Right to—Not a substantive right—Limitation.*

Proceedings in execution are proceedings in the suit and are such subject to the provision of the Code subject however to any special provision in regard to the period within which the application has to be made. The right to execute a decree is not a substantive right. (*Richardson and Newbould*, JJ.) NARENDRA LAL KHAN *v.* UPENDRA NATH. **21 I.C. 113.**

EXECUTION—Right to.

———*—Right to—Instalments conditional on security awarded.*

By the award the judgment-debtor was allowed to pay up the amount by instalments on giving security and if he failed to give the first instalment in time it was to be paid along with the second but he failed to give security and on his failure to pay first instalment but before the time of the second instalment decree-holder filed an application for execution for the first instalment: *Held* the payment of the first instalment along with the second was conditional on the execution of security and the application was proper. (*Martineau*, J.) BHAGWAN DAS *v.* MUT. SADDI LAL.
1923 Lah. 413 (1).

———*—Right to—Second application if, lies.*

Where an execution application for delivery of possession is ineffectual, a subsequent application for the same relief can lie. (*Spencer and Venkatasubba Rao*, JJ.) VENKATA-LAKSHMI AMMAL *v.* SADASIVA AIYAR.
18 L.W. 883 = 1924 Mad. 200

———*Right to—Beneficial owner of decree.*

Where the beneficial owner of a decree applies to be made a party to a pending execution application presented by the nominal decree-holder, on the ground that his rights were not properly safeguarded, the Court is bound to implead him as a party. 26 C. 250; 44 M. 919 Ref. (*Krishnan*, J.) RUKMANIAMMAL *v.* RAMACHANDRA THONDAMAN SAHIB.
44 M.L.J. 122 = 17 L.W. 67 = 1923 Mad. 317 (1).

———*—Right to—Agreement prior to suit not pleaded in suit, if can be pleaded in execution.*

An agreement prior to suit which would be an answer to plff.'s claim, but which is not pleaded in the suit cannot be pleaded in bar of execution. An agreement that a decree to be passed should not be enforced affects the question whether the decree should be passed, and should be made a ground of defence to the suit. (*Spencer and Ramesam*, JJ.) KOONAMNENI MALLAYA *v.* KANNEGANTI CHINNA KOTAYA. **(1921) M.W.N. 382 = 64 I C. 148 = 14 L W. 317.**

———*—Right to—Maintenance decree—Charge on immoveable properties—Suit if necessary after exhausting hypotheca.*

A decree for arrears of maintenance and for future maintenance was passed and the decree-holder after the hypotheca was exhausted, proceeded against other properties belonging to her deceased husband in execution. *Held*, she was entitled to do so, without the necessity of having recourse to a suit, as the decree was not a mortgage-decree. The charge created was merely a lien not antecedent to the decree but created by it and it cannot be said there was a mortgage on the property. The procedure in execution is not limited to O. 34, C.P. Code. (*Mullick and Bucknill*, JJ.) SESHACHARI PEARI *v* RAM KISHORI KUER. **74 I C 867 = 2 Pat 793**

EXECUTION—Scope of enquiry.

Scope of Enquiry.

———*Scope of—Application consigned to record room—First application, nature of.*

Where execution proceedings are consigned to the record room behind the back of the decree-holder and without any default on his part, it was held that a further application, though in the form of a new application for execution, is really a continuance of the older application. (*Walsh and Ryves*, JJ.) RAM LAKHMAN SINGH *v.* LALA MEWA LAL.
63 I.C. 75 = 3 U P.L.R. (All.) 13.

———*—Scope of—Strangers to suit—Property sold in execution—Right to be restored.*

Where in execution proceedings, property belonging to a stranger is sold, as he is ousted and possession given to the purchaser, the stranger has a right to be replaced, although the auction-purchaser's remedy has become barred by time. (*Tudball and Sulaiman*, JJ.) RAM CHARAN SAHU *v.* GOGA. **60 I.C. 120.**

———*—Scope of—Judicial proceeding.*

For purposes of Ss. 192 and 193 of the Penal Code, execution proceedings are judicial proceedings. (*Shah and Crump*, JJ.) *In re* GOVIND PANDURANG.
22 Bom L R. 1239 = 59 I C. 193 = 22 Cr. L.J. 49 = 45 Bom. 668.

———*Scope of enquiry—Amount due to puisne mortgagee left undetermined in suit—Can't be determined in Executing Court.*

The Court executing the decree has no power to ascertain what the amount due to a puisne mortgagee is, when he has failed to prove the amount due to him in the Court which heard and passed the mortgage-decree wherein he had been properly impleaded. Ordinarily when a decree is to be executed, the Executing Court has only the power to carry out the specific orders contained in the decree. (*Seshagiri Aiyar*, J.) SESHA AIYAR *v.* ARIMUTHU VATHIYAR.
34 I.C. 362 = (1916) 1 M.W.N. 323.

———*Scope of.*

An application of intervention of objections and afterwards found groundless should be treated as in continuation or revival of the earlier one for execution of a decree. (*Drake-Brockman*, A.J.C.) MT. BHURIA *v.* BALIRAM.
4 N.L.J. 213.

———*Scope of—Order in—Notice to parties—Necessity for.*

No order to the prejudice of a party can be passed without giving him an opportunity of being heard. (*Jwala Prasad and Bucknill*, JJ.) GOUR CHANDRA ROY *v.* JANARDHAN PRASAD THAKUR.
4 Pat. L.T. 204 = 1923 P. 180.

———*Scope of.*

The Executing Court has power to sell only the property specified in the decree to be sold for the satisfaction of the decree and

EXECUTION—Setting aside.

not anything more. (*Jwala Prasad and Ross*, JJ.) HARADHAN CHAKRAVARTY *v.* HARGOBIND. **6 Pat L J. 347 = 63 I.C. 552 = 2 Pat. L.T. 665.**

Setting aside.

———*Setting aside—Estoppel — Judgment-debtor not objecting.*

A judgment-debtor who once acquiesces in the execution of a decree, cannot subsequently object to its execution. (*Rigg*, J.) LALL DWARKADAS *v* BURMA RAILWAYS CO. **10 L.B.R. 280 = 62 I C. 299 = 13 Bur. L.T. 173.**

Surety.

———*Surety—Release of judgment-debtor—Bond given out of Court but filed in Court—Enforceability of.*

A surety bond merely filed in Court under S. 58 of the C.P. Code for the release of a judgment debtor arrested in execution of a decree is enforceable by proceedings in execution even though it had not been executed by the Executing Court directly. 2 I.A. 219, Foll. (*Oldfield and Seshagiri Aiyar*, JJ.) R NAN JUNDA RAO *v.* MARWADI DHAWMAJI SAWMIJI. **53 I.C. 675 = 10 L.W. 174.**

EXECUTION SALE.

BIDS.
DUTY OF COURT.
EX PARTE DECREE.
EXPROPRIETARY HOLDING.
LEGAL REPRESENTATIVE.
PRIVATE SALE.
RIGHTS OF PURCHASER.
SALE CERTIFICATE.
SETTING ASIDE.
STRANGER PURCHASER.
TERRITORIAL JURISDICTION.
WHAT PASSES UNDER.
See also C.P.C. O. 21, Rr. 89 TO 92.

Bids.

———*Bids — Purchase notwithstanding refusal of leave.*

Purchase by decree-holder at execution sale notwithstanding refusal of leave to bid is voidable, and not void. (*Lord Phillimore.*) RADHAKRISHNA *v.* BISHWESHWAR SAHAY. **16 L.W. 190 = 31 M L.T. 209 = 49 I A 312 = 1 P. 783 = 21 A L.J. 23 = 27 C.W.N 294 = 44 M L.J. 718 = 37 C L J. 430 = 25 Bom. L R. 630 = 8 Pat. L T. 529 = 1922 P.C. 336 (P.C.).**

———*Bids—Knocking down of property—Acceptance of bid by Nazir—Resale of property—Order for—Propriety of.*

An execution sale was held by a Court Nazir who accepted a bid and the deposit of 25 per cent of the purchase-money. After the property had been knocked down, another bidder applied to the Court which ordered a resale. *Held*, that the sale was not concluded when the property was knocked down and the deposit made and the Court had a discretion to order a resale. (*Newbould*, J.) FAZIL MEAH *v.* PROSANNA KUMAR. **1923 Cal. 316 (1).**

EXECUTION SALE—Ex parte decree.

———*Bids—Reopening of bid by order of Court—Legality of procedure.*

Where a bid was considered as the highest in a sale by the Nazir but immediately the Court ordered a re-opening of the sale on a representation being made that there were higher bids and the properties were sold for a higher price, *held*, that the procedure adopted by the Court was perfectly legal and could not be interfered with by the High Court. (*Jenkins*, C.J. *and Chatterjee*, J.) ASHUTOSH CHATTERJEE *v.* SUDHINDRA CHANDRA MOULIK. **13 I C. 697.**

———*Bids—Bid of one person treated as that of another.*

A person cannot avail himself of the bid of another at a Court auction and constitute himself the purchaser by depositing the purchase-money. The consent of the bidder cannot improve his position in this matter. (*Stuart*, A.J.C.) SHAH ZADI *v.* AHMAD ALI SHAH. **47 I.C 993 = 21 O C. 212.**

———*Bids—Sale when complete.*

Mere closing of the bid does not complete the sale. Order of Court to that effect is necessary. (*Das and Macpherson*, JJ.) JAIBHADAR *v.* MATUKDHARI. **2 P 548 = 4 P.L T. 498 = (1923) Pat. 190 = 1923 P. 525.**

Duty of Court.

———*Duty of Court — Adjournment — Damages if can be awarded — Order if executable.*

On the application of the judgment-debtors an execution sale was adjourned on terms and the order further provided that if any further adjournment was asked for the party would have to pay damages: *Held*, the order was illegal as it awarded damages for an event which may or may not happen; (2) that even if it was a valid order it was not by itself an executable order; (3) even if executable, an application for execution made more than three years after the next adjournment was asked for would be barred. (*Das and Kulwant Sahay*, JJ.) MAULVI JAMIL AHMAD *v.* BABU KESHO DAS. **(1923) Pat. 202 = 1923 P. 407.**

Ex parte Decree.

———Ex parte *decree—Effect on sale—Protection of stranger auction-purchaser—Position of decree-holder—Purchaser and his assignees.*

Where a decree *ex parte* is set aside, a sale effected in execution of that decree is *ipso facto* cancelled and even a fresh decree on retrial will not validate the same; where the sale becomes so cancelled a stranger purchaser for value is protected by the Court while the decree-holder purchaser and his assignees have no such protection. (*Mookerjee and Chatterjee* JJ.) ABDUL RAHMAN *v* SARFAT ALI. **22 C.L J. 412 = 31 I.C. 896 = 20 C.W.N. 667.**

EXECUTION SALE - Exproprietary Holding.

Exproprietary Holding.

———*Exproprietary holding—Trees—Saleability of.*

Trees which do not form part of an exproprietary holding cannot be sold in execution of a decree. Trees forming part of an exproprietary holding can be sold. (*Tudball*, J.) MOHAN SINGH *v.* LACHMAN DAS. **33 I.C. 707 = 14 A L J. 241.**

Legal Representative.

———*Legal representative not impleaded—Effect of.*

Where the holder of a decree for rent fails to implead the heirs of the recorded tenant as parties to the execution proceedings, a sale of the holding in execution is invalid as against them and cannot affect their interest. (*Greaves and Panton*, JJ.) ABDUL AZIZ *v* AMIR ALI. **1923 Cal. 166.**

———*Legal representative—Decree against wrong person as legal representative.*

A decree against a wrong person on record as legal representative of a deceased debtor represented by the right heir as *guardian-ad-litem* could not be executed against the estate and the sale is invalid. (*Mookerjee and Beachcroft*, JJ.) SASHI BHUSHAN DASI *v.* PELARAM MANDAL. **18 C L J 362 = 21 I.C. 519 = 18 C.W.N. 173.**

Private Sale.

———*Private sale—Sale under order of Court.*

A sale held by the nominee of the parties to a consent decree on the order of the Court is a sale by the Court in execution. (*Mookerjee and Cumming*, JJ.) J. C. GALSTAUN *v.* WOOMESH CHANDRA BANERJEE. **44 Cal. 789 = 35 I C. 850 = 25 C L.J. 303.**

———*Private sale—Mortgage — Date for payment fixed—Usufructuary mortgage—Sale.*

Where a due date is fixed for payment of the mortgage money in a mortgage-deed, the mortgage is not a pure usufructuary mortgage and the mortgagee is entitled to sell immediately after the due date has passed even though he still remains in possession of the property. (*Coutts and Ross*, JJ.) JAG SAHU *v* MUST. RAM SAKHI KUER. **1 P 35 = 3 P.L.T. 332 = (1922) Pat. 58 = 1922 P. 167.**

Rights of Purchaser.

———*Rights of purchaser—Title of, when complete.*

Semble.—A purchaser at an auction sale of immoveable property gets the right to have a conveyance of the property but no actual title to the property. (*Lord Dunedin*) JAGGANNATH PRASAD SINGH *v.* ABDULLAH. **45 Cal. 909 = 45 I.A. 97 = 16 A L J 516 = 5 Pat L W 83 = (1918 M W N. 405 = 22 C.W N. 891 = 8 L.W. 163 = 24 M L.T 62 = 28 C L J 193 = 20 Bom. L.R 851 = 45 I C. 770 = 35 M.L.J. 46 (P.C.).**

EXECUTION SALE—Rights of purchaser.

———*Rights of purchaser—Sale proclamation—Mistake as to judgment-debtor's share—Auction-purchaser if entitled to relief.*

A mistake, in a sale proclamation, as to the judgment-debtor's share in the property sold does not give any right by itself to the auction-purchaser in the absence of any intentional misrepresentation by or on behalf of the decree-holder. (*Rafique and Ryves*, JJ.) BAIJNATH PRASAD *v.* NARENDRA BAHADUR PAL **19 A.L J. 147 = 61 I.C. 74 = 3 U.P.L R. (All.) 82.**

———*Rights of purchaser — Equity of redemption.*

A executed a mortgage to B in 1898. C obtained a decree against A, in execution of which he attached the equity of redemption of A in 1907 and purchased it in 1911. After the attachment, and before 1911, B brought a suit on his mortgage of 1898 and obtained a compromise decree. C sued to redeem the mortgage. *Held*, that C was liable to pay the full amount specified in the compromise decree and not merely the amount of the original mortgage in favour of B. An attachment of property does not confer any interest in it. It merely operates to keep the property in the custody of the law until such time as a sale can be had to satisfy the decree in pursuance of which the attachment was issued. (*Richards*, C.J. *and Piggott*, J.) BHARAT INDU *v* GOBARDHAN DAS. **23 I.C. 901.**

———*Rights of purchaser—Undivided share—Possession—Suit for—Right of decree-holder to get judgment-debtor's share.*

A got a decree against B and brought to sale his one-sixth share. B meanwhile sued C and others for partition and got a decree that he should be given a one-sixth share on paying a certain sum which he neglected to pay and his decree remained unexecutad. A brought to sale and purchased B's one-sixth share by paying the money to be paid by B to others into Court and obtained possession. C sued for declaration of the right and that A was not entitled to possession by virtue of his purchase. *Held*, that A was not entitled to separate possession of any specific portion of the house by virtue only of his purchase at the execution sale as what passed to him was only the right, title and interest of B in an undivided one-sixth share. (*Chamier and Piggott*, JJ). RAM DULARI *v.* BALAKRAM. **37 All. 120 = 27 I C. 696 = 13 A.L.J 105.**

———*Rights of purchaser — Equity of redemption.*

A purchaser at an auction sale of the equity of redemption is entitled to plead that the stipulation as to interest is hard and unconscionable. (*Bannerji and Griffin*, JJ.) SRI CHAND *v.* NIADAR SINGH. **10 I C. 14 = 8 A.L J. 407.**

———*Rights of purchaser—Where property outside a suit was included in a decree by mistake.*

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A suit to recover the same from the auction-purchaser will not lie unless the sale itself is declared a nullity by a Court. (*Macleod*, C.J. *and Coyajee*, J.) NAGBHATTA TIMMAN BHATTA *v* NAGAPPA SUBBAYYA.
24 Bom. L.R. 423=46 B. 914=1923 Bom. 62.

———*Rights of purchaser — Decree for arrears of rent—Title acquired—Not a new tenancy.*

A purchaser in an execution sale for arrears of rent acquires not only the right, title and interest of the judgment-debtor but the tenure itself passes to him. (*Woodroffe and Walmsley*, JJ.) JNANENDRA MOHAN *v.* UMESH CHANDRA. **25 C.W.N. 985=1921 Cal. 541.**

———*Rights of purchaser—If subject to equities.*

Where the rights of landlord and tenant respecting abatement of rent had been settled by a compromise decree, an auction purchaser of the tenure at a sale for arrears of rent is bound by the same. (*Mookerjee, Newbould and Pearson*, JJ.) UDAI KUMAR DAS *v.* KATYAINI DEBI. **35 C.L.J. 292=49 C. 948=1922 Cal. 87**

———*Rights of purchaser—Accretion taking place before execution sale—Effect.*

Where in a suit by the plaintiff for declaration of title to certain lands alleging that they had accreted to the *ryoti gamai* lands which he had purchased at an execution sale it was found that the lands had reformed long before the purchase. *Held*, that the plaintiff was not entitled to the decree prayed for. (*Chitty and Smither*, JJ.) KRISHNA GOPAL BHOWMIK *v.* HEM CHANDRA BAIRAGI. **46 I.C. 908.**

———*Rights of purchasers*—Bona fide *purchasers—Protection to.*

Courts will as far as possible protect innocent purchasers from the consequences of irregularities and defects of procedure at such sale for the reason that strangers are to prescribe that proceedings are regular ; but such help cannot be extended where the Executing court has no inherent jurisdiction. (*Spencer and Devadoss*, JJ.) MAHARAJA OF JEYPORE *v.* RAJA LAKSHMINARASIMMA GARU.
18 L.W. 717=1924 Mad. 145.

———*Rights of purchaser—Property sold clearly identified but inaccurately described in documents relating to sale—Effect.*

A mortgage deed described the land comprised in it as "Nanja 55"; and the land was so described in the decree passed in a suit upon the mortgage, the notice of sale in execution of that decree and in the certificate of sale. The land was in fact punja and not nunja ; but there was no other No. 55 in that village. *Held*, that the word "Nunja" in the mortgage deed, in the decree and in the documents relating to the execution sale, was merely an inaccurate description of the property described as No. 55 and thus identified, and that the execution sale was valid and conveyed a good

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title to the purchaser. (*Schwabe*, C.J. *and Wallace*, J.) VENKATARAMA AIYAR *v.* ELUMALAI NAICKER. **44 M.L.J. 357=17 L.W. 402=(1923) M.W.N. 217=32 M.L.T. (H.C.) 246=1923 Mad. 442 (2).**

———*Rights of purchaser—Mortgage decree.*

The interest of a purchaser at a sale held in execution of a mortgage decree is certainly more than merely the interest of the judgment-debtor. (*Ayling and Venkatasubba Rao*, JJ.) TANJORE PALACE ESTATE BY ITS RECEIVER SUNDARAM AIYAR *v.* THIYAGARAJA PILLAI.
1923 Mad. 160 (2).

———*Rights of purchaser—Ownership when changes.*

Unless an auction sale is confirmed, ownership does not pass. (*Wallis*, C.J. *and Oldfield*, J.) NARASINGERJI *v.* PANUGANTI.
(1921) M.W.N. 519.

———*Rights of purchaser—Sale subject to incumbrance.*

On the sale of the property subject to encumbrances the vendor gets the price of his interest, whatever it may be, whether the price settled by private bargain or determined by public competition together with an indemnity against the encumbrances affecting the land. The contract of indemnity may be express or implied. If the purchaser covenants with the vendor to pay the encumbrances it is still nothing more than a contract of indemnity. The purchaser takes the property subject to burden attached to it. If the encumbrances turn out to be invalid, the vendor has nothing to complain of. He has got what he bargained for. His indemnity is complete. He cannot pick up the burthen of which the land is relieved and seize it as is own property. The notion that after the completion of the sale, the purchaser is in some way a trustee for the vendor of the amount by which the existence or supposed existence of encumbrances, had led to a diminution of the price and liable, therefore, to account to the vendor for anything that remains of that amount after the encumbrances are satisfied or disposed of, is without foundation. After the purchase is completed the judgment-debtor has no claim to participate in any benefit which the purchaser may derive from his purchase by reason of the incumbrance being less onerous than it was stated to be. (*Kotwal and Prideaux*, A.J. Os.) MITSUI BUSAN KAISHA, LTD. *v* PADAMRAJ FULCHAND. **6 N.L.J 217=1923 Nag. 219.**

———*Rights of purchaser—Property purchased subject to encumbrance—Effect of.*

Where a purchaser at an execution sale buys the property which is encumbered, he must be deemed to accept the burden of the encumbrance and cannot thereafter escape from it merely because his purchase has not been profitable, 31 M. 439 ; 40 B. 646, Ref. to. (*Hallifax*, A.J.C.) PANDURANG *v.* NARAYAN.
76 I.C. 615=6 N.L.J. 78.

EXECUTION SALE—Rights of purchaser.

———*Rights of purchaser—Alienee pendente lite—Mortgaged property—Simple mortgage—Stranger purchaser from mortgagor pending suit on mortgage.*

Where a simple mortgagee gets a decree for sale of the mortgaged property and purchases the property himself, a stranger purchasing part of the property from the mortgagor while the suit of the mortgagee against him is pending, is not competent to raise the plea of adverse possession against the mortgagee as he, the stranger purchaser, is only a representative of the mortgagor (*Kanhaiya Lal*, A.J.C.) MAHESH BAKHSH SINGH *v.* MANOHAR LAL
33 I.C. 657 = 18 O.C. 389.

———*Rights of purchaser—Mortgage decree.*

An auction purchaser in execution of a decree for sale on a mortgage purchases the rights of the mortgagors as they exist on the date of the mortgage, and the rights of the decree-holder *qua* the property sold as they exist on the date of sale. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) SOHAN LAL *v.* JOT SINGH. **20 I.C. 453 = 16 O.C. 148.**

———*Rights of purchaser—Purchaser subject to mortgage and purchase not subject to a mortgage but with notice—Distinction—Purchaser's rights.*

A distinction is to be drawn between the case of an auction-purchaser who buys property not subject to a mortgage but with notice and the case where he buys property declared subject to prior mortgages. In the former case, the auction-purchaser does not acquire any greater rights than that of redeeming the mortgage; in the latter, the Court does not decide whether the mortgage subsists or not; if there is a mortgage, the purchaser has to redeem it; if not, he acquires the property free from liability. The former is provided for by S. 282 of the old Code. (O. 21, R. 62, C.P.C.) and the latter by S. 287 (O. 21, R. 66) 27 A. 97; 16 M. 207; 18 B. 175; 24 A. 418, Foll. (*Lindsay*, A.J.C.) RAMKUMAR *v.* DWARKA PRASAD.
15 I.C. 5 = 15 O.C. 211.

———*Rights of purchaser—Crops on the land—Delivery of possession.*

The sale of a plot of land in execution of a decree would pass to the purchaser the crops growing on the land unless they had been exempted from the sale by notification. (*Ross*, J.) DHOBI ROY *v.* MAHADEO SINGH.
4 Pat. L.T. 318 = 1 Pat. L.R. 269 = 1923 P. 355.

———*Rights of purchaser—State of the law.*

The rights of the parties at the time of the sale are fixed with reference to the state of the law at that time and any subsequent interpretation will not operate to affect the result. (*Mullick and Jwala Prasad*, JJ.) JADAB LAL SINGH *v.* DEBI LAL SINGH.
3 Pat. L.W. 149 = 2 Pat. L.J. 725 = 42 I.C. 399 = 1919 Pat. 426.

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———*Rights of purchaser—Irregularity—*Bona fide *purchaser for value.*

Only an innocent purchaser for value, who is not a party to any fraud, can claim the benefit of a purchase in bad or irregular execution proceedings. 14 C. 18; 15 C. 557, Ref. (*Roe and Jwala Prasad*, JJ.) RAM KHELAWAN PANDE *v.* ASGAR ALI. **36 I.C. 681.**

Sale Certificate.

———*Sale certificate—Particulars in, if can be corrected.*

The particulars given in a sale certificate cannot be corrected by reference to the boundaries given in the plaint. (*Chitty and Smither*, JJ.) KRISHNA GOPAL BHOWMIK *v.* HEM CHANDRA BAIRAGI. **46 I.C. 908.**

———*Sale certificate—Revenue sale—Principle applicable to revenue sale in which sale certificate is not title deed of purchaser.*

Quære.—Whether the principles applicable to a sale under C.P. Code, 1908, are also applicable to a revenue sale in which the sale certificate is not the title-deed of the purchaser. (*Chapman, Mullick and Atkinson*, JJ.) MAHANT KRISHNA DAYAL GIR *v.* SAYED ABDUL GAFFUR. **2 Pat. L.J. 402 = 40 I.C. 13 = 2 Pat. L.W. 229.**

Sale Subject to Incumbrance.

See C.P.C., O. 21, RR. 62, 66.

Setting aside.

———*Setting aside—Grounds — Omission to comply with statute—Irregular decree—Objection to sale—Suit to set aside sale—C.P. Code, S. 47—Bar.*

In a mortgage suit for sale the decree did not comply with the provisons of S. 88 of the T.P. Act as no day was fixed by Court on which payment might be made within six months from the date of declaring in Court the amount due. In execution of the decree the mortgaged properties were attached, sold and purchased with the permissison of the Court by the mortgage decree holder. The sale was duly confirmed. The sons of the mortgagor who had been parties to the suit and the execution proceedings under the decree brought the present suits to redeem the mortgage. *Held*, that the decree was intended to be made in compliance with the Act, and, whether or not its provisions were complied with, the property and all the right, title and interest of the defendant were in fact sold in execution of a decree of Court which had jurisdiction to entertain a suit in which the decree was made and that the mortgagor (plaintiff) lost all right to redeem. The question now raised could have been raised before the sale was confirmed and if so raised, would have been determined by the Court executing the decree, and the present

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suit was barred by S. 244, C.P.C., 1882 (S. 47 C. P. C.). (*Sir John Edge.*) GANAPATHY MUDALIAR *v.* KRISHNAMA CHARIAR.
41 Mad. 403=45 I.A. 54=23 M L.T. 198=27 C.L.J. 367=34 M.LJ. 463=4 Pat. L W. 310=(1918) M.W.N. 310=22 C.W N. 558=16 A.L.J. 353=20 Bom. L.R. 580=44 I C. 855=8 L.W. 427 (P.C.).
[Affirming 24 I.C. 187=27 M.L.J. 213]

———*Setting aside—Grounds—Decree erroneous in law—Sale in execution.*

A sale in execution of a decree passed by a Court with jurisdiction does not become a nullity merely because the Court in passing the decree exercised its jurisdiction wrongly. The remedy of the aggrieved party was to have appealed against the decree or order. Where therefore a mortgagee purchases the equity of redemption in execution of an order under S. 583 of the C.P. Code of 1882 (S. 144 new Code) against the mortgagor, the sale is valid and the mortgagor's right of redemption is extinguished. (*Mr. Ameer Ali.*) PRABHU DAYAL *v* KALYAN DAS. **38 All. 163=43 I A. 43=20 C.W N. 425=19 M.L.T. 206=(1916) 1 M.W N. 234=3 L W. 293=23 C.L J 411=33 I C 505=18 Bom. L.R. 382 (P.C.)**

———*Setting aside—Grounds—Non-compliance with O. 21, R. 22 of the C P. Code.*

A judgment debtor became insolvent pending an attachment and his properties vested in the Official Assignee. A sale was held in execution without notice of execution to the Official Assignee who had been brought on record as representative. *Held*, that the sale was void. (*Lord Parker.*) RAGHUNATH DAS *v.* SUNDAR DAS KHETRI. **42 Cal 72=18 C.W N. 1058=1 L W 567=27 M.L J 150=16 M L.T. 353=(1914) M.W.N. 747 16 Bom. L R 814=20 C L J 555=13 A L J 154=24 I C. 304=41 I A. 251 (P.C.).**
[Reversing 15 I.C. 288]

———*Setting aside—Suit—Fraud — Misrepresentation by judgment-debtor's pleader—Auction purchaser not responsible.*

In a suit to set aside an execution sale on the ground of fraud and misrepresentation by the judgment-debtor's pleader that he was going to apply for an adjournment of sale and the consequent omission of bidders to be present and bid at the sale, *held*, that there was no fraud, and even if the alleged representation of the judgment-debtor's pleader be true, the auction-purchaser was not responsible. There was not sufficient ground for setting aside a sale confirmed by the Court after prompt local inquiry and for inflicting on the auction-purchaser a forfeiture of the considerable purchase-money paid by him out of his own

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funds. (*Lord Robson*) BISHAN CHAND *v.* BIJOY SINGH. **15 C W.N. 648=8 A.L J. 537=13 C L.J. 518=13 Bom. L.R. 440=(1911) 2 M.W.N. 418=21 M L.J 652=11 I.C. 399=10 M L T. 335 (P.C.).**

———*Setting aside—Bundelkhand Land Alienation Act—Obection to sale—Sale held and confirmed—Effect of.*

An objection in an execution case, to the effect that properties could not be sold under the Bundelkhand Land Alienation Act, was dismissed in default and the property was sold and the sale was confirmed. This order was set aside on appeal and the case was remanded by the appellate Court, and the effect of this was to revise the objection, which, if upheld, would render the sale and confirmation void as contrary to the Act (*Sulaiman*, J.) SATDHAR *v.* RAM CHANDRA. **L R 4 A. 167 (Civ.)=21 A L.J. 917=43 All. 133=1924 A. 261.**

———*Setting aside—Order by appellate court—Possession taken by purchaser—Resale.*

A decree for sale was passed on three mortgages in one suit and in execution all the properties were sold in one lot and purchased by the decree-holder himself. Subsequently on an appeal by a representative of the judgment-debtor the High Court set aside the sale and directed a resale of the properties in three lots. *Held*, that the decree-holder purchaser could not apply to get possession of the properties purchased by him without applying for a resale of the properties separately. (*Walsh and Ryves*, JJ.) HARBANS NATH TEWARI *v* ACHRAJ NATH. **3 U.P L.R. (A.) 52=(1922) All. 375.**

———*Setting aside—Irregularity in procedure—Ancestral property sold as non ancestral property—Effect of.*

Where ancestral property is sold as non-ancestral, a suit by judgment-debtor to set aside the court sale on account of that irregularity will not lie. (*Piggott and Walsh*, JJ.) BHATELLY CHUNNI LAL *v* CHAKKERPAN. **L R 3 A 167=44 A. 330=20 A L J 281=1922 A. 66.**

———*Setting aside—Sale of ancestral property.*

A sale of ancestral property by a civil Court is not void in law. (*Stuart and Ryves*, JJ.) DILIPNARAIN SINGH *v.* SARMAOTI BIBI. **17 A L J. 982=67 I.C. 931=42 A. 58.**

———*Setting aside—Sale after postponement by Court.*

A sale in execution after an order of postponement by Court is void, though the officer conducting it was not aware of the order. (*Gokul Prosad*, J.) BRAHM SINGH *v.* BHANDU. **62 I.C. 687=19 A.L.J. 225.**

———*Setting aside—Purchase by decree-holder—Application by judgment-debtor with consent of decree-holder.*

In execution of a decree certain property belonging to the judgment-debtor and the

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decree-holders (one of whom was also the purchaser) was sold and the judgment-debtor by mutual consent applied to get the sale set aside on the ground of inadequacy of price. *Held*, that the Court had power to set aside the sale as there was no opposition on the part of the decree-holders or the purchaser. (*Richards*, C. J. *and Tudball*, J.) MAHOMED ABDUL RASHID ALI KHAN *v* BUDH SEN.
47 I C 885=16 A.L J. 750

———*Setting aside.*

When the auction-purchaser discovers that the judgment-debtor had no saleable interest must apply for setting aside the sale under R. 91, before he can get refund of the purchase-money. (*Macleod*, C. J. *and Coyajee*, J.) BALWANT RANGANATH *v* BALA MALU.
24 Bom. L.R. 303=46 B. 833=1922 B. 205.

———*Setting aside—Right to refund of purchase-money.*

Where an execution sale is set aside as void the purchaser is entitled to a refund of the amount of the purchase-money with interest. (*Batchelor and Rao*, JJ.) PREMRAJ *v.* JAVARMALL. **18 I.C. 381=15 Bom. L R. 41.**

——*Setting aside—Nullity and irregularity—Distinction—Test.*

It cannot be maintained on principle that because a sale has been held in contravention of a statutory provision, it must necessarily be null and void. An irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding; whereas a nullity is a proceeding that is taken without any foundation or is so essentially defective as to be of no avail or effect. One test is to see if the party can waive the objection. If he can, it is an irregularity; if not, a nullity. A provision based on grounds of public policy cannot be waived; but if it is for the benefit of the individual he can. (*Mookerjee and Chotzner*, JJ.) RAJANI KANTA GHOSE *v.* SHEIKH RAHAMAN GAZI. **27 C.W.N. 766=37 C L.J 417=1924 C. 408**

———*Setting aside—Fraud—Plea of purchaser without notice—When a bar to application.*

If a decree is obtained by fraud, the execution sale can be set aside if the facts of the cases show that the person agreed has the balance of equity in his favour as against the decree-holder and purchaser. Thus a purchaser without notice is protected the value of equity being in his favour and the application to set aside the sale will not be entertained. (*Mookerjee and Rankin*, JJ.) BISESWAR GHOSE *v.* PANCHOURI GHOSE. **37 C.L.J. 145=27 C.W.N. 587=1923 C. 538**

——*Setting aside—Fraud*—Ex parte *decree—Stranger purchaser.*

An execution sale ought not to be set aside merely because the sale was held in execution of an *ex parte* decree obtained by fraud where the purchaser is a stranger who was no party to the fraud and was not aware of it at the

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time of paying the purchase-money. (*Teunon and Buckland*, JJ.) GOPAL PORAI *v.* SWARNA BEWA. **64 I C. 611.**

———*Setting aside—Fraud and collusion—Rent sale—Decree against heirs of original tenant—Unregistered transferee.*

P. who held a mourazi mokurari jote bequeathed it to the plaintiff. Plaintiff's name not having been registered in the landlord's books, the landlord, though aware of the bequest in plaintiff's favour sued P's heirs for rent, got a collusive decree and in execution thereof sold the jote. *Held*, that the plaintiff's right to the jote was not extinguished by the rent sale. (*Chitty and Smither*, JJ.) JAGADISH CHANDER DEO DHABEL DEB *v.* SRIDAM MAHATA. **44 I.C. 26.**

———*Setting aside—Fraud—Decree impeached.*

A fraudulent decree must be set aside within three years of the knowledge of fraud. Where this is not done in time, the sale in execution thereof cannot be set aside. (*Mookerjee and Richardson*, JJ.) RAJKUMAR SARKAL *v.* RAJAKUMAR MALI. **33 I.C. 767=20 C W.N 639.**

———*Setting aside—Auction-purchasers—Some appealing against order setting aside sale, effect of, as regards auction purchasers not appealing.*

If the appellate Court reverses the order of the first Court setting aside the sale on an appeal preferred by one of the auction-purchasers at an execution sale, the order of the first Court does not stand even against other auction-purchasers who did not appeal. (*Sharfuddin and Chapman*, JJ.) TULSI RAUT *v.* NABI BUX. **32 I.C. 193.**

———*Setting aside—Grounds for—Events happening after institution of suit, if can be taken notice of.*

An execution sale can be set aside even on grounds not present when an application for the same was made, and for this purpose the Court can take notice of events which have happened since the institution of a proceedings with a view to do complete justice to the parties. (*Mookerjee and Chatterjee*, JJ.) ABDUL RAHMAN *v.* SARAFAT ALI.
22 C L J. 412=31 I.C. 896=20 C.W.N. 667.

———*Setting aside—Grounds—Decree barred.*

A judgment-debtor seeking to set aside a sale cannot succeed on the ground that the application for execution was time-barred. (*Carnduff and Beachcroft*, JJ.) KAMAR-UDDIN *v.* MANMATHA NATH MANNA.
19 I.C. 377.

———*Setting aside—Effect of confirmation.*

A sale confirmed in favour of an auction-purchaser is not liable to be set aside in proceedings to which auction-purchaser is not a party. (*Stephen and Richardson*, JJ.) KONNORMAL OSWAL *v.* NABIN CHANDRA DAS. **15 I.C. 228.**

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———*Setting aside—No notice to auction-purchaser—Appeal.*

An appeal lies from an order setting aside execution sale without notice to the auction-purchaser at the instance of the auction-purchaser. (*Scott-Smith*, J.) GUL BANO *v.* MUHAMMED ZAKAR KHAN. **3 Lah L J 463**

———*Setting aside—Inherent power—Abuse of the process of Court—Suppression of facts—Leave to bid—Matters to be considered in granting leave.*

The Court has inherent power to refuse to confirm an execution sale if it is satisfied that it it was misled either in giving leave to bid or in fixing the real price. The Court will not however exercise the inherent power unless it has had all the facts fully before it and is satisfied that it has been misled. In order to show that the Court has been misled, it is necessary to show either actual misstatements to the Court or non-disclosure to the Court of relevant facts unknown to the Court and which there was a duty to bring before the Court. 23 Mad. 217, followed. On an application for leave to bid the main question for the Court to consider is whether it is to the advantage of every one concerned in order to obtain the highest price that the plaintiff should be allowed to bid or not. In this case their Lordships set aside an execution sale by reason of the deliberate suppression by the decree-holder in his affidavit before the Registrar on the Original Side of the facts that the properties were put to auction before and that the Court had fixed a very much higher reserve price and that a bid for a much larger amount was not accepted. (*Schwabe*, C J. *and Wallace*, J.) RAGHAVACHARIAR *v.* MURUGESA MUDALI **46 Mad 533=44 M L J 680=(1923) M W N 323=32 M L T (H C.) 285=17 L.W. 750=1923 Mad. 635.**

———*Setting aside—Parties.*

A purchaser at a sale *held* in execution of a decree which he subsequently sought to be amended is a necessary party to the application for its amendment on the general principle that persons, whom it is desired to bind by proceedings can and must be impleaded in them and the order allowing the amendment is not binding on him, if they are not so impleaded. (*Oldfield and Ramesam*, JJ.) NARAYANA AYYAR *v.* BIYARI BIVI **16 L W. 623=32 M L T (H C.) 98=43 M L J. 559=(1923) M W N 731=1923 Mad. 57.**

———*Setting aside—Major defendant treated as minor—Knowledge of proceedings—Estoppel.*

One of the defts. who where the judgment-debtors under a decree attained majority after the date of the decree and before proceedings in execution for sale of the property were taken. He was nevertheless represented on the record as a minor and the sale was held with him on the record as a minor. On an application by him to set aside the sale on that ground, *held* that the fact that he knew of the proceedings throughout afforded an answer to the objection, even though the decree-holder was aware of his majority. 21 M, 167 ; 6 L.W. 272 ; 39 M. 1031, Foll. (*Oldfield and Venkotasubba Rao*, JJ.) RADHAKRISHNASWAMI NAIDU *v* ANNAMALAI CHETTIAR. **43 M.L J 92=31 M.L.T. 122 (H C.)=15 L.W. 643=(1922) M.W.N. 655=1922 Mad. 301.**

———*Setting aside—Grounds for—Impeaching collaterally.*

The mere fact that the Court ordering the sale had notice of an attachment by the superior Court does not oust the jurisdiction of the former Court and the sale cannot be treated as a nullity. A sale in contravention of S. 63 (1), C.P.C., is not *null* and *void* but merely irregular. The title of a purchaser at a judicial sale, not himself in fault, cannot be impaired at law or in equity by showing any mere error or irregularity in the proceedings. Errors and irregularities must be corrected by a direct proceeding. If not so corrected, they cannot be made available by way of collateral attack on the purchaser's title. There cannot be a collateral impeachment of a judicial sale and a direct impeachment is possible only to the parties to the proceedings or those interested therein. 4 A. 359, Not Foll.; 18 B. 458 ; 22 M. 295, Foll. (*Srinivasa Aiyangar*, J.) NARAYANAN NAMBUDRI PAD *v.* TAWKER J. MEGAJI SEIT. **32 I.C. 927.**

———*Setting aside—Parties—Separate suit in a different Court to impeach whether lies.*

The validity of a duly confirmed Court sale can be questioned in a subsequent suit in a different Court only if all the parties interested therein are represented. (*Ayling and Spencer*, JJ.) SWAMI ROWAPPA *v* KUPPUSAWMY AIYENGAR. **10 M.L.T 210=12 I C 130=(1911) 2 M.W.N. 342.**

———*Setting aside—Absence of attachment.*

A sale does not become null and void merely by reason of the absence of an attachment, which is intended for the protection of the decree-holder and to take the property out of the disposition of the judgment-debtor. (*Hallifax*, A.J.C.) HARILAL *v.* NARAYAN. **4 N L J. 118=18 Nag. L.R. 152=1922 Nag. 267.**

———*Setting aside—Suit against two sets of defendants.*

Where the suit was brought against both sets of defendants if the plaintiff was wrongly given possession contrary to the decree, it was open to either of them to apply for restitution. (*Daniels*, J.C.) DORI LAL *v.* MT. JAMAGA **1923 Oudh 16.**

———*Setting aside.*

Acquiescence in sale without objection operates as an estoppel. (*Lyle*, A.J.C.) ABDUL RAZAK *v.* MUHAMMAD HAJJAM. **9 O.L.J 131=1922 Oudh 11.**

EXECUTION SALE—Setting aside.

———*Setting aside — Order of refusal—Appeal.*

An order refusing to set aside a sale or to allow restitution can be appealed against as a decree. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) NAWAB NUZHAT-UD-DAULA ABBAS HUSAIN KHAN *v.* NAWAB DILBAND BEGAM.
21 I.C. 570 = 16 O.C. 226.

———*Setting aside—Grounds—Sanction—Absence of.*

After every attachment of a share in a *mauza*, a fresh sanction should be obtained from Government to the sale of the property attached. Where a certain share in a *mauza* was attached but a larger share was put up to sale and sold. It was held that the sale was invalid and hence it cannot be upheld even to the extent of the share actually attached. (*Lindsay*, J.C.) GAYA PRASAD SINGH *v.* MISRA SINGH. **15 I.C. 780 = 16 O.C. 51.**

———*Setting aside—Sanction of Government for sale of ancestral property given after sale, if sufficient.*

Sanction of Government for the sale of ancestral property, given after the sale is not sufficient to validate the same. (*Chamier*, J.C.) MUHAMMAD AHMED *v.* PRAG NARAIN.
11 I.C. 346 = 14 O.C. 115.

———*Setting aside—Sale within 30 days of proclamation is not void.*

A sale held within 30 days of the proclamation is not void but such an order is only a material irregularity. (*Miller and Mullick*, JJ.) WAZIR NARAYAN *v.* BHIKHARI RAM.
(1922 Pat. 321 = 3 Pat. L.T. 651 = 4 U.P.L.R.(Pat.) 100 = 1923 P. 45.

———*Setting aside—Sale in defiance of injunction—Effect of.*

The District Court in execution of a decree fixed a date for the sale of certain properties. Before that date the claimant instituted a suit in the Sub-Court and obtained an injunction restraining the decree-holder from selling the property. The District Court refused to stay the sale whereupon the sale was held and the purchase-money paid into Court. On an application to set aside the sale, *held* by the High Court that though the District Court was not personally bound by the order of injunction, yet it should in the exercise of its inherent power have directed stay of the sale having regard to the fact that the decree-holder was restrained by injunction from executing the decree. In the result the sale was set aside and the money deposited in Court was refunded to the purchaser. (*Miller*, C.J. *and Mullick*, J.) MAHARAJ BAHADUR SINGH *v.* A. H. FORBES. **(1922 Pat. 225 = 3 P.L.T. 645 = 1 P. 662 = 1922 P. 382.**

———*Setting aside—Fraud.*

Though a decree is fraudulently obtained, the execution sale under it is not rendered void, unless the auction-purchaser was a party to the fraud in the execution proceedings which vitiated the sale. (*Jwala Prasad*, J.) JAGARNATH PRASAD *v.* BAHURANI. **62 I.C. 594.**

EXECUTION SALE—Territorial Jurisdiction.

Stranger Purchaser.

———*Stranger purchaser—Decree-holders.*

The Court has a tender regard for honest purchasers at sales held in execution of its decrees though the sales may be afterwards set aside, where those purchasers are not parties to the suit and the decree has not been passed without jurisdiction. But the mere measure of protection is not extended to purchasers who are themselves the decree-holders nor to the purchasers from those decree-holders-purchasers. (*Jenkins*, C.J. *and Chatterjee*, JJ.) SATIS CHANDRA GHOSE *v.* RAMESWRI DASI.
22 C.L.J. 409 = 31 I.C. 894 = 20 C.W.N. 665.

———*Stranger purchaser—Irregularities in sale—Effect on auction purchaser.*

A *bona fide* auction-purchaser need look, only to the decree and order of sale of the executing court and is not bound to inquire further into title. So long as the decree remains valid, the proceedings taken under that decree, so far as they affect third parties in the same position as a *bona fide* auction-purchaser, cannot be impugned. 29 B. 435, 436; 10 A. 166 (P.C.) Rel. (*Le Rossignol and Campbell*, JJ.) INDAR SAIN *v.* PRABHU LAL. **3 Lah. 88 = 1922 Lah. 277.**

———*Stranger purchaser—Decree—Reversal of—Effect of sale.*

A *bona fide* purchaser who is not the decree-holder, or any person claiming through him, at an auction sale in execution of a valid decree acquires a valid title to the property purchased by him and is not affected by the subsequent reversal or modification of the decree. 14 C. 18: 10 A. 166; 26 C. 734; 37 C. 107 Foll. (*Broadway and Martineau*, JJ.) TARA CHAND *v.* ABDUL AHAD. **67 I.C. 894.**

Territorial Jurisdiction.

———*Territorial jurisdiction—Want of.*

Sale held by Court without territorial jurisdiction is void. Objection to defect of jurisdiction must be taken at the earliest opportunity in the Court of first instance. (*Mookerjee and Chotzner*, JJ.) MOHAN CHAKRAVARTY *v.* MANINDRA CHANDRA ROY CHOUDHRY.
27 C.W.N. 842 = 1923 C. 619.

———*Territorial jurisdiction—Agency court if can sell property outside.*

A court has no jurisdiction in execution of a decree to sell property over which it had no territorial jurisdiction at the time it passed the order of sale. Thus an Agency Court has no right to sell the right to collect *kattubadi* in villages situated beyond the limits of its territorial jurisdiction. (*Spencer and Devadoss*, JJ.) MAHARAJAH OF JEYPORE *v.* RAJAH LAKSHMINARASIMMA GARU.
18 L.W. 747 = 1924 M. 145.

EXECUTION SALE—Territorial Jurisdiction.

———*Territorial jurisdiction*

Where properties are transferred by Government notification from the territorial jurisdiction of the Court which passed the decree it has no jurisdiction thereafter to attach or sell the property. If, however, the sale is held in execution and confirmed, the judgment-debtor might be estopped if he sued to recover possession. The auction-purchaser however is not estopped from doing so. (1883) 13 Q B.D. 457, Foll.; 22 Cal. 909 Expl; 35 Cal. 877 and 7 C.L J. 644, Not Foll. Whatever may be the general position of an execution creditor in regard to cases over which a Court has jurisdiction, the principle of estoppel should not be extended to cases where the judgment-debtor is sought to be affected by a rule of procedure relating to jurisdiction. (*Abdur Rahim*, O C J. *and Seshagiri Aivar*, J.) VEERAPPA CHETTY *v.* RAMASAMY CHETTI **43 Mad. 135 = 37 M.L J. 442 = 26 M L T 271 = 53 I.C. 579 = 11 L W. 232.**

What passes under.

———*What passes under.*

It is only the property attached that can pass by the execution sale. If the decree-holder attaches the wrong property by mistake, his remedy is to start with fresh execution proceedings. (*Lord Moulton.*) RAJA THAKUR BARMHA *v.* JIBAN RAM. **41 Cal 590 = 41 I.A 38 = 18 C.W N 313 = 15 M L.T 137 = 12 A L J. 156 = 19 C.L J. 161 = 26 M.L J 89 = (1914) M W N 118 = 21 I C. 936 = 16 Bom. L.R. 153 (P.C.).**

———*What passes under—Attachment and sale of property of stranger.*

Attachment and sale of defendant's property for decree against plaintiff is illegal and void and the sale is without jurisdiction. The purchaser gets no title. (*Lord Macnaghten* J.) RAGHO PROSHAD *v.* MEWALAL. **34 All 223 = 39 I A. 63 = 11 M.L T. 193 = (1912) M W.N. 311 = 14 Bom. L R 212 = 16 C.W.N 433 = 15 C L J 327 = 9 A L.J 401 = 18 I C. 177 = 22 M L J. 457 (P C.).**

———*What passes under—Appurtenances—Sale of sixteen annas Zemindari—Groves.*

Where in execution of a mortgage decree the entire 16 annas zamindari with all appurtenances were sold and purchased by the plaintiff the sale is not exclusive of the shares in the groves. (*Richards*, C.J. *and Tudball*, J.) HASAN ALI KHAN *v* AZHA RUL HUSAN. **41 All. 45 = 48 I C. 367 = 16 A L J. 900.**

———*What passes under—Sale of Zamindari rights—Buildings appurtenant to Zemindari.*

Where an inventory filed with the application for execution of a decree specified the Zamindari to be sold, but not the buildings situate therein the sale passed the Zamindari only and not the buildings. 4 A. 381, 22 A. 168; Dist. (*Knox and Rafique*, JJ.) SAKHAWAT ALISHAH *v.* MUHAMMUD ABDUL KARIM KHAN. **38 All. 59 = 31 I.C. 809 = 13 A L.J. 1098.**

EXECUTION SALE—What passes under.

———*What passes under—Joint Hindu family—Decree against father—Son's interest when passes.*

In the absence of any objection by any member of the family when joint family property is put up for sale in execution of a decree against a manager it may be inferred that the intention was to pass the interest of all the members of the family in the property, though it may be open to other members of the family to dispute that intention and to satisfy the Court either that the alienation was not binding on them that the debt incurred by their father was not binding on them or any other ground that their interest in the joint family property had not passed to the auction-purchaser. 44 I.A. 1 Rel. (*Macleod*, C.J *and Crump*, J.) DADA JINAPPA *v.* YESU SAKHOBA. **25 Bom L R. 494 = 1923 Bom. 450.**

———*What passes under—Sale in lots—Realization of proceeds.*

Where property is sold in execution in several lots, the proceeds are deemed as not realized, until the entire amount of purchase-money in respect of all the parcels is paid into Court. (*Mookerjee*, A.C J *and Fletcher*, J.) BARENDRA NATH MITTER *v* MARTEN & CO. **62 I.C. 167 = 33 C.L.J. 7.**

———*What passes under—Question of intention—Impartible estate.*

The question what the Court intended to sell and the purchaser intended to buy is a question of fact or rather of mixed law and fact and must be decided on evidence, *e.g.* the character of the debt, the frame of the suit, the judgment and decree, the terms of the sale proclamation, the adequacy of the price, the law at the time of the sale, etc. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA *v.* MURUGAPPA. **34 Mad. 325 = (1913) M.W.N. 86 = 12 M.L T 511 = 18 I C. 49 = 23 M.L.J. 658.**

———*What passes under—Mixed question of fact and law.*

In an execution sale what the Court intended to sell and what the purchaser understood he bought is a mixed question of law and fact. How the parties themselves viewed it, at the time, is of much greater value than evidence procurable some twenty years after the transaction. In determining what the Court intended to sell, the state of the law at the time of sale is not conclusive. (*White*, C.J. *and Phillips*, J.) ALAGARAYA GOUNDAN *v.* MINAKSHI NAIDU. **37 Mad 22 = 24 M L.J 652 = 10 M L.T. 298 = 12 I.C. 389 = (1911) 2 M.W N. 328.**

EXECUTION SALE—What passes under.

——— *What passes under.*

The test is what the Court intends to sell and what the purchaser understands that he bought the question of what the Court could, or should have sold does not arise. 10 Mad. 241 (P. C.); 27 Mad. 131. Foll. (*Baker*, O.J.C.) SAKHARAM *v.* GITABAI.
1923 Nag. 333.

——— *What passes under—House and site—Sale of house without site—Rights of purchaser.*

Where in execution of a money decree a house is sold without the site on which it stands, the purchaser cannot get possession of the house without also getting possession of the site. (*Batten*, J.C.) RAMASA *v.* GAMBHIR CHANDSA. **6 N.L.J. 25=1923 Nag. 150.**

——— *What passes under—Right, title and interest of judgment debtor—Rights of decree-holder in a different capacity.*

An auction-purchaser in execution of a money decree derives his title from the judgment-debtor and not from the decree-holder. A purchaser at an auction-sale purchases only the right, title and interest of the judgment-debtor and not any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made by the judgment-debtor himself. (*Mitra*, A. J. C.) NARAINRAO *v.* FATHELAL. **43 I.C. 907=15 N.L.R. 48.**

——— *What passes under—Trees—Pass with land—Shade rights.*

A sale in execution of trees belonging to the judgment-debtor passes the right, title and interest of the judgment-debtor to the purchaser and the former cannot claim any shade right in respect of those trees. (*Mitra*, J.C.) GANGARAM *v.* YASHODABAI. **42 I C 261=13 N.L R. 163**

——— *What passes under — Validity of—Person not a party.*

Persons who are not parties to a decree are not bound by it and ordinarily sale in execution does not operate to pass property of persons not bound by it. (*Lindsay*, J.C.) JADU NATH SINGH *v.* AFZAL KHANAM. **8 O L.J 191=7 O.L J. 862=57 I C 5.6=2 U.P.L R. (J.C) 118**

——— *What passes under—Sale of portion of the judgment debtor's property without statement of his proportionate shares.*

In execution of a joint and several decree against the defendant and his co-sharers, plaintiffs applied for sale of the joint property, of which only a portion was sanctioned. Plaintiffs bought it at the sale. But the sale proclamation and the sale certificate did not contain the proportionate interest of the several judgment-debtors. *Held*, that the auction-purchasers must be deemed to have purchased the whole and not merely the defendant's interest in the portion directed to be sold. (*Lindsay*, J.C.) BABU MAHENDRA NATH DAB SINGH *v.* JADUNATH SINGH. **21 I.C. 262.**

——— *What passes under.*

Where the D Register could not be reconciled with the khatian and khewat and where the words "Panch gunda Minjumle das gunda Pokhta" were used in execution proceedings, *Held*, the auction-purchaser would be entitled to five gundas share in the village. (*Coutts and Adami*, JJ.) RASIK BEHARI PRASAD CHAUDHURI *v.* HIRDENARAIN CHAUDHURI.
1923 P. 30.

——— *What passes under—Rent sale for whole tenure—One village named in proclamation—Sale certificate—Effect of.*

In a suit for recovery of the entire rent due in respect of the whole tenure comprising five villages one of the villages B alone was mentioned in the plaint and the names of other villages were omitted. In execution of the rent decree the property was attached under the description of 'Bijulia asli maidakhri' and in the sale proclamation and in the certificate for sale the property was described as two annas eight pies 'Bijulia asirmi dakhilk. *Held*, that the whole tenure passed by the execution sale and not the village Bijulia only. (*Chamier*, C.J. *and Sharfuadin*, J.) DURGA PRASAD *v.* DINESHWAR NATH.
4 Pat. L.W. 347=43 I C. 534=(1918) Pat. 5.

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See also (1) ADMINISTRATOR.
(2) PROB. AND ADM. ACT.

——— *Rights of—Probate—Effect of—Grant—Administrator.*

The authority and title of an executor is derived from the will of his testator and not from any grant of probate. The personal property of the testator including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of Court, he is allowed to prove his title. An administrator, on the other hand, derives his title only from the grant. (*Lord Parker.*) SOONA MAVANA KENA ROONA MEYAPPA CHETTY *v.* SOONA NAVANA SUPPRAMANYAN CHETTY **20 C W N 833=(1916) 1 M.W.N. 455=18 Bom. L R. 642=114 L.T. 1002=43 I A. 113=85 L J (P.C.) 179=35 I.C. 825=(1916) 1 A.C. 603.**
[*See* also **30 M.L J. 555=35 I C. 1=20 M.L.T. 50 (P.C.).**

——— *Acceptance of office.*

Where an executor accepts office and acquires property as such he is estopped from setting up his own title to the property until he

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obtained a valid discharge. (*Lord Macnaughten*). SRINIVASA MOORTHY *v.* VENKATAVARADA. **34 Mad 257 = 15 C W.N. 741 = 8 A L.J 774 = 13 Bom L R. 5 0 = (1911) 2 M.W N 37 = 14 C L J 61 = 21 M.L.J. 669 = 11 I C. 447 = 10 M L T. 263 (P C.).**

[Affirming 29 Mad. 239 = 16 M L J 238 = 1 M.L T. 71.]

———*Minor legatee—Deposit of sum in Bank—Breach of trust by executor—Liability of Bank—Limitation Act, Arts* 48, 60, 120.

Where in pursuance of the directions of a will, the executors deposited a sum of money, in a Bank to accumulate until the minor legatee attained majority, but some time before the event, drew out the amounts. *Held* in a suit by the legatee against the Bank for the amounts thus drawn out, in the absence of notice, actual or constructive, that the depositors were acting as trustees in the matter, the Bank was not privy to any breach of trust; that the moneys were deposited as executors and as such the Bank was entitled to deal with them. For purposes of limitation, the suit must be treated as one for conversion in which case Art. 48 would apply or for money had and received for plff's. use in which case Art. 62 would apply, but not Arts. 120 or 133. (*Macleod*, C.J. *and Shah*, J.) BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM.

24 Bom. L.R. 513 = 1923 Bom. 153.

———*Liability to render accounts—Retention of assets—Debts—Onus.*

Where an executor is sued for accounts, the onus lies on him to prove that he was a creditor of the estate of the deceased testator at the time of his death and that he was consequently entitled to retain the assets of a portion of them towards the debt. (*Mookerjee and Chotzner*, JJ.) PULIN BEHARI DEY *v.* SATYA CHARAN DEY. **36 C.L.J. 367 = 1922 Cal. 79.**

———*Indemnity—Delay in filing accounts does not affect right to idemnity.*

The executor has no power to carry on business carried on for indefinite time where they were not authorised by will. Executor is personally liable for incurring debts. (*Greaves*, J.) SUDHIR CHANDRA DAS *v* RASSESWARI CHAUDHURI. **35 C L.J. 46.**

———*Co-executors—Powers of.*

Where there are several executors the powers of all may, in the absence of any direction to the contrary in the Will may be exercised by any of them who has proved the Will. 27 Cal 683, Foll. (*Mookerjee and Panton*, JJ.) RANI HEMANGINI DEBI *v.* SARAT SUN DARI DEBYA.

66 I.C. 882 = 34 C.L J. 437.

———*Execution of decree against—What passes.*

Where a widow was appointed executrix of the estate of her husband who had two minor sons, and Probate was granted to her and a decree wes passed against her for

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arrears of rent, and an occupancy holding of her husband was sold in execution, *held*, that the whole of the holding passed under the sale, and not merely her title, right and interest in it, although her executorship may be deemed as closed on the attaining of majority of the sons, as the sons allowed their mother to remain in possession. (*Mookerjee*, A C.J. *and Fletcher*, J.) MAHENDRA NATH MONDAL *v.* SHAMSUDDIN. **33 C.L.J. 198 = 62 I C 314 = 5 C W.N. 279.**

———De son tort—*Accounts—Suit for account by one against representatives of another.*

Plaintiff and another as executors under the will of a Hindu lady took out probate but the estate was administered by the latter alone during his life-time. *Held*, that the defendants representatives of the executors who assumed management were in the position of trustees *de son tort* and it was not open to them to deny their liability as such or to contend that they were trespassers and could not therefore be liable to render accounts. The rule of English law that no liability as executor *de son tort* can arise where there is a personal representative did not apply in this case where plaintiff the rightful executor took no part in the administration when the defendants were intermeddling with the estate. The trustee represents the *cestui que trust* and the suit for accounts at the instance of the plaintiff was maintainable against the defendants. (*Chatterjee and Panton*, JJ.) DHANPAT SINGH *v.* MOHESH NATH TEWARI

57 I.C. 805 = 24 C.W.N. 752.

———*Rights of*—Debutter *created before will—Executors—Title to* debutter *property.*

The executors of a will before the date of which a *debutter* had been created by the testator, will not get vested with the *Debutter* property and are not entitled to maintain a suit in respect thereof. (*Woodroffe and Smither*, JJ.) MOHENDRA NATH *v* GOUR CHANDRA.

46 I.C. 857 = 22 C.W.N. 860.

———*Representation of estate — Decree obtained by—Purchaser by executor—Family arrangement.*

The fruit of the decree obtained by an executor as such goes to the beneficial owners of the estate. (*Fletcher and Smither*, JJ.) KRISHNA POOMODA DAS *v.* KEDAR NATH.

41 I.C. 732.

———*Powers of—Reference to arbitration.*

An executor or administrator is under certain circumstances, for example, for the settlement of any debt, account or claim in relation to the estate in his hands, competent to make a reference to arbitration; such right cannot be disputed when exercised within the limits of his authority. But an executor cannot make a reference to arbitration with the avowed purpose that the terms of the will may be modified and arrangements made for the management and distribution of the estate

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contrary to the directions of the testator. (*Mookerjee and Beachcroft*, JJ.) SOUDAMINI GHOSE *v.* GOPAL CHANDRA GHOSE.
19 C.W.N. 948 = 28 I.C. 557 = 21 C.L.J. 273.

———*Accounts—Residuary legatee—Right to claim account from executor.*

A residuary legatee under a will is entitled to claim an account from the executor so far as is necessary for ascertaining what the residuary share is, and an executor cannot plead that he is discharged from the liability because he has filed certain accounts in the Probate Court. (*Jenkins*, C.J. *and Mookerjee*, J.) KHETRAMANI DASEE *v.* DHIRENDRA NATH ROY. 25 I.C. 370 = 41 Cal. 271.

———*Liability of—Rents.*

The executors are personally liable for the rent of the estate vested in them and not the beneficiaries who might ultimately be entitled to the property. (*Mookerjee and Teunon*, JJ.) BIJOY CHAND *v.* PARBATY CHARAN.
10 I.C. 560 = 15 C.L.J. 468.

———*Representation of estate—Heirs of executor—Whether can enforce an agreement entered into with the executor by third person.*

The heirs of an executor have no *locus standi* to enforce an agreement entered into between the executor and a third person in connection with the administration of the estate after the executor's death in the absence of an authority from the Court. The person duly authorised to administer the testator's estate under Act V of 1881 after executor's death is the proper person to enforce the agreement. (*Shah Din and Le-Rossignol*, JJ.) DITTA RAM *v.* RUP CHAND. 31 I.C. 802 = 152 P.W.R. 1915.

———De son tort — *Suit against—Legal representative as party to suit.*

Where an executor *de son tort* takes possession of all the assets of the deceased, a suit for general administration can be filed without joining the legal representatives and in cases where he takes possession of only a part of the assets he can be made accountable for the part he actually took possession of, without joining the legal representatives. But where administration is sought for the entire estate in cases where the executor *de son tort* has taken possession of only a part, the legal representatives would also have to be added. (*Schwabe*, C.J. *and Coutts Trotter and Kumaraswami Sastri*, JJ.) ZAMINDAR OF BHADRACHALLAM *v.* SRI RAJA VENKATADRI APPA ROW.
43 M.L.J. 486 = (1922) M.W.N. 532 = 31 M.L.T. 221 (H.C.) = 16 L.W. 369 = 46 M. 190 = (1922) Mad. 457.

———*Legatee seeking possession—Procedure.*

If one legatee or a purchaser of his interest seeks to obtain actual possession of his share of the estate, he must do so in the proper course of administration. (*Spencer and Ramesam*, JJ.) SOUNDARATHAMMAL *v.* NARAYANASWAMI AIYAR. 42 M.L.J. 567 = 31 M.L.T. 50 = 15 L.W. 639 = 1922 Mad. 303.

EXPECTANCY.

———*Joint executor—Renewal of debt.*

One of the joint executors has powers of renewal of debt barred by limitation. (*Oldfield and Venkatasubba Rao*, JJ.) ALAMURI SITARTMASWAMI *v.* PRALIVADI BHAYANKARNAM ANNAM VENKATA RAGHAVACHARYULU. 16 L.W. 52 = (1922) M.W.N. 278 = 30 M.L.T. 344 = 42 M.L.J. 559 = 1922 M. 214.

———*Management of estate—Lending money by, to another executor.*

If it is not so directed in the testator's will, one executor cannot lend money to another executor without security. In India there are no separate forms of actions for every suit, like these in England and hence the rule of English Common Law, forbidding an action of *Devestavit* being brought by one executor against another, does not apply in India. (*Sadasiva Aiyar and Napier*, JJ.) VARDARAJULU CHETTY *v.* RAJAMMA. 2 L.W. 322 = 30 I.C. 63 = (1915) M.W.N. 252.

———*Contracts by—Personal liability.*

Upon a contract of borrowing made by an executor he is only liable personally, and cannot be sued as executor so as to get execution against the assets of the testator. 7 C.W.N. 104; 31 Cal. 353, Ref. In special cases however the estate may be liable. (*Davies*, A.J.C.) BABU ANANTRAM *v.* NATIONAL BANK OF UPPER INDIA, LTD. 66 I.C. 116 = 9 O.L.J. 94.

———*Liability of—Trustee.*

An executor becomes a trustee when generally speaking the funeral and testamentray expenses and the debts are discharged, the legacies are paid and sums are set apart for investment in the trust created by the will. (*Pratt*, J.C.) HEMANDAS RAMRAKHIOMAL *v.* CHELLARAM DHALLOMAL. 32 I.C. 554 = 9 S.L.R. 134.

EXECUTRIX.

See EXECUTOR.

EX PARTE.

See (1) CIV. PRO. CODE, S. 9, R. 13.
(2) JUDICIAL PROCEEDINGS.

EX PARTE CASES.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE DECREE.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE JUDGMENT.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE ORDER ABSOLUTE.

See CIV. PRO. CODE, O. 34.

EX PARTE PROCEEDINGS.

See CIV. PRO. CODE, O. 9.

EXPECTANCY.

See T. P. ACT, S. 6.

EXPENSES OF WITNESSES.

See CIV. PRO. CODE.

EXPERT

See EVIDENCE ACT, SS. 45, 50.

EXPERT EVIDENCE.

See EVIDENCE ACT, S. 45.

EXPERT OPINION.

See EVIDENCE ACT, S. 45.

EXPRESS MALICE.

See (1) MALICIOUS PROSECUTION,
(2) TORT.

EXPRESS TRUST.

See (1) TRUST.
(2) TRUSTS ACT.

EXPROPRIETARY HOLDING.

See (1) LANDLORD AND TENANT.
(2) OCCUPANCY HOLDING.

EXPROPRIETARY TENANCY.

See AGRA TENANCY ACT.

EXPROPRIETOR.

See AGRA TENANCY ACT.

EXPUNGING FROM RECORD.

See (1) CIV. PRO. CODE, S. 151.
(2) PRACTICE.

EXTENSION OF TIME.

See CIV. PRO. CODE, SS 148, 151 AND O. 34.

EXTINGUISHMENT OF CHARGES.

See (1) B.T. ACT, SS. 159-163.
(2) T.P. ACT, S. 101.

EXTINGUISHMENT OF RIGHT.

See (1) LIMITATION ACT, S. 28.
(2) MERGER.
(3) T. P. ACT, S. 101.

EXTRADITION ACT (XXI OF 1879).

———S. 14—*Transfer of a case.*

As to the first of these prayers we think that we have no power to order the transfer of an enquiry under the Extradition Act, S. 14, as the Magistrate's competency to hold the inquiry depends upon the authorization of the executive Government and the High Court cannot request the Government to appoint another Magistrate with such powers nor dictate the procedure to be followed. (*Hill and Stevens, JJ.*) *In re* MOHUNT DEV DAS.
38 Cal. 550=12 Cr. L J. 346=10 I C. 946=15 C W N. 735.

EXTRADITION ACT (XV OF 1903).

———*Action of Magistrate under—Charter Act, S. 15—Appellate jurisdiction.*

The D. C. Magistrate acting under the Extradition Act is not subject to any appellate or revisional jurisdiction. He makes an inquiry and reports the results to Government. (*Caspersz and Sharfuddin, JJ.*) RUDOLF STALLMAN *v.* EMPEROR **38 Cal. 547=10 I.C. 618=12 Cr L J 322=15 C.W.N. 737.**

EXTRADITION ACT (XV of 1903), S. 6.

———S. 2, Chap. II—'*Chander Nagore' is Foreign State—Procedure.*

'Chander Nagore,' is a Foreign State as defined by the Act and the procedure provided by Chap. II of the Act should be followed before surrendering an offender to the Authorities of that state. (*Buckland, J.*) *In re* CHLESTE CULLINGTON. **22 Cr. L.J. 691=63 I C. 819=48 Cal. 328.**

———S. 3—*Detention pending enquiry—Legality*—Habeas corpus.

Detention of a fugitive criminal pending the consideration of the report of the investigating Magistrate by the Government is not illegal. The High Court's power to issue a writ of *habeas corpus* is not taken away by S. 3 (6) and (7) of the Extradition Act but where neither the arrest nor the detention is within its jurisdiction the High Court cannot issue *habeas corpus*. (*Chaudhuri, J.*) TOPY *v.* EMPEROR. **20 Cr. L J. 257=50 I C. 17=46 Cal. 52.**

———S. 3—*Bail.*

The Act provides for bail to be furnished by persons accused of certain crimes and the matter is one which is governed by the procedure in the Cr. P. Code. The High Court has the fullest discretion in the matter. (*Caspersz and Sharfuddin, JJ.*) RUDOLF STALLMAN *v.* EMPEROR. **15 C.W N 736=12 Cr. L J 358=10 I.C. 953=38 Cal 547.**

———Ss. 6 (4) and 10—*Custody for a period exceeding two months—Right to a discharge—Escape from lawful custody—Theft—Extraditable offence—Extradition proceedings*—Habeas corpus.

The warrant of arrest under which the accused was arrested in extradition proceedings referred to the offence of escaping from lawful custody but the warrant was issued on a petition charging him with theft which is an extraditable offence. *Held*, that the extradition proceedings were taken in respect of an extraditable offence. In the circumstance of the case, the accused who had been in custody for a period exceeding two months had not been committed to prison under S. 3 (4) of the Extradition Act, and consequently S. 3 (10) was inapplicable to entitle him to be discharged by the High Court. An application for transfer for a writ of *habeas corpus* and for bail refused on the merits. 38 Cal. 547, Ref. *Per Woodroffe, J. Semble*—The High Court has no general superintendence over such extradition proceedings. It would have no jurisdiction to grant bail. (*Sanderson, C.J. and Woodroffe, J.*) A. C. TOPS *v.* EMPEROR
20 Cr. L.J. 241=49 I C. 913=46 Cal. 31.

EXTRADITION ACT (XV of 1903), S. 7.

———**Ss. 7, 8 and 8-A**—*Not mentioned in treaty with Hyderabad State—Power of British Magistrate to grant bail—Cr. P. Code, S.* 496.

The offence of cheating is an extraditable offence so far as British India is concerned, notwithstanding its omission from Article 4 of the Treaty between the British Government and the Hyderabad State. A British Indian Magistrate to whom a warrant has been addressed under S. 7 of the Act has no power to admit to bail a person arrested under it apart from the provisions of Ss. 8 and 8-A of the Act. (*Heaton and Hayward*, JJ.) *In re* MURLIDHAR BHAGWANDAS. **43 Bom. 310 = 48 I.C. 674 = 20 Cr. L.J. 34 = 20 Bom. L.R. 1009.**

———**Ss. 7 and 22**—*Certificate—Extradition Rules, R, 3—Political Agent—Warrant issued on requisition of Native State—Certificate for trial of accused in British India—Subsequent recall of certificate—Accused ordered to be tried in Native State.*

The Political Agent has no power to cancel the certificate already granted and the subsequent order for the trial of the accused in the Native State must be set aside. R. 3 of the Rules under the Indian (Foreign Jurisdiction) Order in Council, 1902, and under S. 22 of the Extradition Act do not control S. 188, Cr. P. Code. The rule contains a reminder to Political Agents of their duty to consider the advisability of issuing certificate prior to issuing any warrant. A certificate under S. 188, Cr. P. Code, can be issued even after a warrant has already gone out. (*Batchelor and Heaton*, JJ.) *In re* VAZIRSAHEB ALLISAHEB. **13 Cr. L.J. 537 = 15 I.C. 809 = 14 Bom. L.R. 377.**

———**S. 7**—*Action of Magistrate—Revision—Cr. P.C., S.* 491.

Where a warrant is issued under the Act by Political Agent, the execution by the District Magistrate is an executive act and the High Court cannot interfere in revision but the power of the High Court to interfere under S. 491 of the Cr. P. Code is left untouched by the decision. (*Jenkins*, C.J. *and Teunon*, J.) GULLI SAHU *v* EMPEROR. **42 Cal. 793 = 26 I.C. 335 = 16 Cr. L.J. 31 = 19 C.W.N. 221 = 21 C.L.J. 112.**

———**Ss. 7 and 10**—*Warrant of arrest—Surrender of the accused—Procedure unknown—Revision.*

Where the Magistrate directed the surrender of the accused on a procedure unknown to Extradition Act, the order is open to revision by the High Court. (*Imam and Chapman*, JJ.) EMPEROR *v.* GULLI SAHU. **41 Cal. 400 = 14 Cr. L J. 673 = 21 I.C. 993 = 18 C.W.N. 869.**

———**Ss. 7 (2) and 15**—*Criminal arrested under S. 7—Remedy of.*

A fugitive criminal arrested under S. 7 of the Act can invoke the action of Government under S. 15 of the Act. (*Jenkins*, C.J. *and Teunon*, J.) GULLI SAHU *v.* EMPEROR. **19 C.W.N. 221 = 21 C.L.J. 112 = 26 I.C. 335 = 16 Cr. L.J. 31 = 42 Cal. 793.**

FACTORIES ACT (XII of 1911), S. 24.

———**S. 15**—*Propriety of warrant—High Court—Jurisdiction.*

Though S. 15 of the Extradition Act ousts the jurisdiction of High Court to enquire about propriety of a warrant if it is issued under Chapter III of the Act, yet where an order of a Magistrate is sought to be justified as derived from the ordinary law which in fact does not give him jurisdiction, the order is open to revision by the High Court at the instance of the party whose liberty is affected by it. 7 Bom. L.R. 863 Ref. Where a warrant was issued without any evidence and without reporting the issue to the Political Agent the order was bad under S. 10, clauses (1) and (2) of the Extradition Act. (*Imam and Chapman*, JJ.) EMPEROR *v.* GULLI SAHU. **41 Cal. 400 = 14 Cr, L.J. 673 = 21 I.C. 993 = 18 C.W.N. 869.**

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURT.

See RESPECTIVE HIGH COURT RULES.

EXTRA TERRITORIALITY.

See JURISDICTION.

EXTRINSIC EVIDENCE.

See EVIDENCE ACT, S. 92, ETC.

FACT, FINDING OF.

See CIV. PRO. CODE, S. 100.

FACTOR.

See CONTRACT ACT, SS. 171 AND 182.

FACTORIES ACT (XV OF 1881).

———**S. 17**—*'Occupier,' meaning of.*

The word 'occupier' in S. 17 of the Act bears the same meaning as it bears in similar enactments in England, that is, a person who regulates a factory and controls the work that is done there. (*Batchelor and Rao*, JJ.) EMPEROR *v.* DHANJI GOVINDJEE. **14 Cr. L.J. 384 = 20 I.C. 144 = 16 Bom. L.R. 328.**

———**(XII OF 1911).**

———**Ss. 24 and 27**—*Women—Employment of, during night—Inspector of Factories, power of.*

An owner of a factory is prohibited from employing women for night work except with the opinion of the Inspector of Factories and one who does so, is guilty of an infringement of Ss. 24 and 27 of the Factories Act. But the Inspector has no rights to issue a general prohibition against the employment of women on night duty. (*Rafique and Stuart*, JJ.) COCOLAS *v.* EMPEROR. **22 Cr. L.J. 369 = 61 I.C. 225 = 19 A.L.J. 503 = 3 U.P.L.R. (All.) 83.**

FACTORIES ACT (XII of 1911), S. 29.

———Ss. 29 and 41—*Liability of manager and occupier—Joint and several.*

Liability of the occupier and manager of a factory to be sentenced for an offence under S. 41 is joint and several. Where, therefore, both are tried jointly for an offence under the section they cannot each be sentenced to the maximum penalty provided by the section but their joint liability to pay fine should not exceed the maximum. (*Shah and Crump*, JJ.) VRIJAVALLBHODA DAS *v.* EMPEROR.

43 Bom. 220=58 I.C. 152=21 Cr. L J. 728=22 Bom. L.R. 904.

———Ss. 41 and 42—*Occupier—Manager—Separate sentences if legal.*

Separate sentences of fine on the occupier and manager in one trial under S. 41 of the Act are illegal. An 'occupier' is the controller for the time being of the factory and may be either an owner or a lessee or a mortgagee with possession. The manager merely carries out the occupier's orders to work the factory. If there is no manager, the occupier himself is deemed to be the manager. (*Le Rossignol*, J.) NIRANJAN LAL *v.* EMPEROR.

13 P.R (Cr.) 1918=46 I.C. 189=19 Cr. L.J. 495=21 P.W.R. (Cr.) 1918.

———S. 41 (a)—*Legality of conviction—Employment.*

The Indian Factories Act is a special Act, and in the absence of definite evidence to show that a boy, seven or eight years old, was employed or allowed to work in contravention of the provisions of the Act, a conviction under S. 41 (*a*) is illegal. (*Knox*, J.) SANEHI RAM *v.* EMPEROR. **20 Cr L.J. 236=49 I.C. 860=17 A.L.J. 223.**

———S. 41 (a)—*Workmen employed to work after prescribed time—Separate conviction.*

The Manager of a Mill who employs a number of workmen to work in his Mill after 7 P.M. is liable to be convicted and sentenced separately in respect of each such workman under the provisions of S. 41 (*a*) read with S. 29 (1) of the Factories Act. (*Shah and Hayward*, JJ.) EMPEROR *v.* JOHNSON.

20 Cr. L.J. 837=53 I.C. 933=21 Bom. L.R. 1059.

FACTUM VALET.

See HINDU LAW—(1) ADOPTION.
(2) MARRIAGE.

FAIR COMMENT.

See TORT—DEFAMATION.

FAKIR.

See MAHOMEDAN LAW.

FALSE IMPRISONMENT.

See TORT.

FAMILY ARRANGEMENT.

ACQUIESCENCE IN, FOR A LONG PERIOD
COMPROMISE, WHAT IS.
CONSIDERATION.
DESCENDANTS AND HEIRS.
LIMITED OWNER.
MEANING AND TESTS OF.
MINORS, WHEN BOUND.
MISTAKES, EFFECT OF.
PROOF.
REGISTRATION IF NECESSARY.
TRANSFER OF PROPERTY, WHETHER ESSENTIAL.

Acquiescence in, for a long period.

———*Acquiescence in, for a long period—Estoppel.*

A Hindu died in 1856 leaving behind him a widow and three daughters. Under an arrangement in 1875 the widow divided the whole of the property among her three daughters and her grandsons then living. The daughters and grandsons entered into immediate possession of their lots and mutation of names was effected in their favour. Subsequently each of the daughters dealt with the property allotted to her on the division as her own absolute property. In 1884 one of the daughters sold a portion of her share of the property to the defendant. She died in 1912, and in 1913, her surviving sister brought a suit for recovery of possession of the property alienated claiming that in consequence of the death of her mother and sisters, she had become the sole heir of her father and was entitled to possession. *Held*, that the plaintiff was bound by her own agreement and that in view of the long period of time which had elapsed since the arrangement was made she could not be allowed to repudiate the agreement and to impeach a sale which was made on the faith of it. (*Viscount Cave.*) MUSSAMMAT HARDEI *v.* BHAGWAN SINGH. **24 C.W N. 105=2 P.L.T. 237=50 I.C. 812=13 L.W. 436 (P.C.)**

———*Acquiescence in, for a long period—Binding nature—Conduct of the parties.*

A family settlement of a disputed claim arrived at without fraud or concealment is binding on the parties and cannot be reopened, especially when it has been acted upon and carried out. 42 Cal. 801 (P. C.) referred to. (*Piggott and Kanhaiya Lal*, JJ.) BALDEO SINGH *v.* UDAL SINGH. **43 All. 1=18 A.L J. 877=58 I.C. 732=2 U.P.L.R. (All.) 202.**

———*Acquiescence in, for a long period—Binding nature of—Acted upon for a very long time.*

In a case referred to arbitrators disputes had arisen between a daughter and the daughter's sons by another daughter of one C in respect of property left by C. The arbitrators gave a portion of the property to the daughter and the rest of the property to the daughter's sons by another daughter. The award was made a rule of Court and acted upon for a very

AMILY ARRANGEMENT—Acquiescence in, for a long period.

long time. *Held*, that the award was a family arrangement which was binding not only upon the actual parties to it but upon the whole family. 33 A. 356 Ref. (*Richards*, C.J. *and Banerji*, J.) MADAN LAL *v.* CHUTTAN SINGH.
15 I.C. 297=10 A L.J. 101.

———*—Acquiescence in, for a long period—Long acted upon—Repudiation.*

Where two daughters entitled to joint possession of the entire estate for the whole of their lifetime surrendered a portion of their intereet and allowed J who had no immediate right of any kind to obtain possession of an area of 48 bighas and odd out of the whole property whereby J acquired a substantial benefit which he has been enjoying ever since, *held*, that under these circumstances J could not be allowed to turn round and repudiate the arrangement claiming as a reversioner to the last full owner. (*Lindsay*, J.C.) JAGESHAR *v.* BHUSHAN.
24 O.C. 5.

Compromise.

———*—Compromise by female heir in suit by her—If binds upon her sons.*

A *bona fide* and final settlement of disputes and of the rights of each party in a suit by a female heir to establish her title as heir to her father's property, is binding upon the reversioners. (*Chatterjea and Duval*, JJ.) SHRINATH BOSE *v.* NIBARAN. **53 I C 945= 25 C.W N. 859.**

Consideration.

———*—Consideration—Provisions invalid—Effect.*

A settlement of property upon successive generations of a Mohammadan family is void by Mohammadan law, and is not validated by the use of the term 'wakf' and the insertion of a remote and illusory provision for charitable purposes. (*Lord Cave*). KHAJEH SOLEHMAN OUDIR *v.* NAWAB SIR SALIMULLAH BAHADUR. **49 I A. 153= 31 M.L T. 79 (P C.)=24 Bom L.R. 1257= 49 C. 820=27 C W.N. 101= 43 M L.J 385=37 C.L J 56= 21 A L.J. 1=1922 P.C. 107 (P.C).**

———*Consideration—Giving up of property under threat of litigation—Effect of.*

For a valid family settlement there must be a *bona fide* dispute which is *bona fide* settled by the members of family. There is a difference between a settlement in consideration of the settlement of family disputes or even of the screening of family scandals and yielding up property on a threat of litigation. The former transaction should bind the members of the family though they may have been minors at the time, but the latter can at best only bind the parties to it. Hence where the defendant puts forward a baseless claim to the property to which he was not rightfully entitled and the persons legally entitled thereto gave it up in order to avoid litigation. *Held*,

FAMILY ARRANGEMENT—Consideration.

there was no family settlement and the plaintiffs, who were the reversionary heirs and no party to the settlement, were not bound by it. (*Richards*, C.J. *and Rafique*, J.) HIMMAT BAHADUR *v.* DHANPAT RAI. **38 All. 336= 35 I C. 148=14 A.L.J. 340.**

———*—Consideration—Validity.*

A compromise of a suit by a Muhammadan wife for the recovery of her dower, whereby the wife accepted in lieu thereof a life estate in a portion of her husband's estate and the husband a similar life estate in his remaining property and it was agreed that after their death the entire property should be taken by the children is a valid family settlement according to Muhammadan Law. (*Stanley*, C.J. *and Banerjee*, J.) NASIRUL HAQ *v.* FYAZUL RAHMAN. **33 All. 457=9 I.C. 530= 8 A.L.J. 278.**

———*Consideration—Hindu widow—Reversioner—Settlement on daughter.*

Where the Hindu reversioners parted with their rights for a sum in cash in favour of the widow so as to allow her to endow her daughter on marriage, the transaction was held to be valid family arrangement conclusively. (*Batchelor and Heaton*, JJ.) ABHISANG TIRABHAI *v.* RAISANJ FATESANG.
16 I.C. 561=14 Bom. L.R. 602.

——— *Consideration*—Bona fide *dispute with female owner — Duty of Court to uphold arrangement—Reversioners, if can question.*

The several members of a family effected a settlement of their dispute each relinquishing all claim in respect of all property in dispute other than that falling to his share and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. The settlement thus effected was *bona fide* settlement for the benefit of the family. A partition of the estate followed thereupon and the parties acted on its terms. The Courts were bound to give full effect to it. Such settlement is not open to objection by reversioners by means of a suit to establish their right to some of the properties. (*Chatterjee and Duval*, JJ.) SRINATH BOSE *v.* NIBARAM CHANDRA ROY. **53 I.C. 945.**

———*Consideration — Disputed claim — Parties not entitled to resile from—Relinquishment—Effect of.*

Per *Mookerjee*, J.—A statement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto are not permitted to deny, ignore or repudiate. This principle, is however, inapplicable to a case where there was no dispute to put an end to, when the compromise was effected and the consideration of the compromise was not the sacrifice of a right but the amendment of a claim. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) MARIAM BIBEE *v.* SHAIKH MUHAMMD IBRAHIM. **48 I.C. 561= 28 C.L J. 305.**

FAMILY ARRANGEMENT—Consideration.

———*Consideration.*

Family settlement between members of a family is binding only when there are *bona fide* claims on either side and a full disclosure of facts on either side. (*Chatterjee and Mullick*, J.) SHAM LAL *v.* RAMESHWARI BASU.

38 I.C. 273=33 C.L.J. 82.

———*Consideration—Widow—Repudiation.*

Where under a family arrangement an agreement was entered into by which a reversioner was put in possession of some property by the widow and there was a good consideration for the agreements executed by them by which the reversioner abstained from suing to set aside the gift by the widow, the widow or her transferee are not entitled to sue for possession of property and to repudiate the contract. (*Reid*, C.J. *and Kensington*, J.) MUHAMMAD UMAR ALI *v.* AMAN ALI. **261 P.L.R. 1911= 12 I.C. 140=170 P.W.R. 1911.**

———*Consideration — Separate releases—Value of.*

In family arrangement to settle family affairs and have peace among the female members if separate releases are executed by the members of its various branches in favour of the sole senior member of one branch, each of such releases will be valid and binding as one of a series of transactions by which the family arrangment was secured and when a major member executes a release deed on the footing that certain debts exist, the deed is *prima facie* evidence of the existence of such debts. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) ABDUL HUSSAIN *v.* MAHOMED IBRAHIM. **3 L.W. 379= 35 I.C. 243=19 M.L.T. 346.**

———*Consideration—Binding nature of—Inquiry into antecedent rights of parties.*

In judging of the validity of a compromise, Courts are not entitled to inquire into the rights of parties as they stood before the compromise to see whether the compromise has recognised them, the inquiry should be restricted to the question, whether the claims advanced by either side were *bona fide* and whether the compromise really is in settlement of such claims. Every compromise may involve the giving up of certain claims to which a party may be rightly entitled, and the acquisition of interests to which he may have no claim. But if such compromise is a settlement of disputes advanced *bona fide*, then *prima facie*, it ought to be upheld. This reason applied with greater force in cases of family settlements where the peace of the family is involved, and especially so when the settlements were effected long before the date of the dispute between the parties. (*Sundara Aiyar and Ayling*, JJ.) AUTHI LAKSHMI *v.* ANNASAMY AIYAR.

23 M.L.J. 104=(1912) M.W.N. 696= 15 I.C. 723=12 M.L.T. 140.

———*Consideration—Present or future disputes.*

To validate family settlement, it is not necessary that there should be an existing dispute. It is sufficient that there should be the possibility of a future dispute which might result in litigation. The avoidance of future litigation and the consequent preservation of the family property is sufficient consideration for a family settlement. (*Lyle and Ashworth*, J.Cs.) GANDHARP SINGH *v.* NIRMAL SINGH.

22 O.C. 300=54 I.C. 325=6 O.L.J. 629.

FAMILY ARRANGEMENT—Descendants and heirs.

Descendants and Heirs.

———*Descendants and heirs—Will creating a division—Document.*

Where a document styled a will but effecting a division of family properties *in præsenti* among the sons of the executant was acted upon by all the parties concerned it is effective as a family arrangement binding on all. The mere fact that larger share was given to one of the parties is immaterial. (*Lord Moulton.*) BRIJRAJ SINGH *v.* SHEODAN SINGH.

35 All. 337=40 I.A 161=11 A.L.J. 698= 17 C.W.N. 949=18 C.L.J. 57= (1913) M.W.N. 515=14 M.L.T. 11= 13 Bom. L.R. 652=19 I.C. 826= 25 M.L.J. 188 (P.C.).

———*Descendants and heirs*—Bona fide *dispute—Right to succession—T. P. Act, S. 6—Chance of heir apparent—Settlement as dispute.*

The existence of a *bona fide* dispute is a good consideration sufficient to support a contract even though the claim which caused the dispute turn out afterwards to have no foundation. *Held*, that the agreement in question being a family arrangement was binding on the parties and their representatives and was not void under S. 6 of the T.P. Act. (*Piggott and Walsh*, JJ.) CHABLI *v.* PARMAL.

41 All. 611=1 U.P.L.R. (H.C) 91= 31 I.C. 919=17 A.L.J. 822.

———*Descendants and heirs— Binding — Nature of.*

In settlement of claims to the estate of a deceased Hindu between his brothers and his widow and his daughter, the brothers were put in possession of a substantial portion of the property and the daughter's son was given some property absolutely, from generation to generation. *Held*, that the compromise was binding on the descendants of the brothers and that the daughter's son had absolute right in the property. (*Richards*, C.J. *and Banerjee*, J.) RAM NARESH LAL *v.* SADHU SARAN LAL. **28 I.C. 685.**

———*Descendants and heirs—Reasonableness.*

The reasonableness of family settlement is to be gathered from the state of the family at the time of the settlement and not from its condition when that has to be determined by the Courts. Children follow fathers effecting a partition or a settlement directly or indirectly. The principle of representation here overrides the principle of vested interest and if the

partition or settlement is fair and reasonable, the minor children cannot be allowed to question the same on attaining majority. (*Beaman*, J.) JAN MAHOMED *v.* DATU JAFFAR. **38 Bom. 449=22 I.C. 195=15 Bom. L.R. 1044.**

Limited Owner.

——*Limited owner—Hindu widow—Compromise of suit—Division of estate—Alienation.*

Where suit, brought by a daughter of deceased Hindu, against the widow of his adopted son, was compromised, whereby the family estate was partitioned out amongst the several claimants. *Held* that the compromise was not an alienation by a limited owner but a family settlement in which each party took a share of the family property by virtue of independent title which was to that extent and by way of compromise admitted by the other parties. (*Lord Moulton.*) HIRAN BIBI *v.* SOHAN BIBI. **18 C.W.N. 929=27 M.L.J. 149=24 I.C. 309=1 L.W. 648 (P.C.)**

[On appeal from 1 I.C. 180 and 10 I.C. 230.]

——*Limited owner—Hindu widow—Alienation—Reversioner's acquiescence.*

As the creation of the *ijara and darijara* by a Hindu widow in respect of her husband's estate is a part of a general family settlement effected for the benefit of the estate and injured nobody and as the conduct of the objecting reversioners raised a presumption that they believed the arrangement to have been made in good faith and under such circumstances of necessity, as would give it validity according to Hindu Law, and as it has always been a feature to Hindu Law to attach great weight to the sanction by expectant reversioners of an alienation of property by a Hindu woman, as affording evidence that the alienation was under circumstances which rendered it lawful and valid, the reversioners could not question it. (*Lord Moulton*) BIJOY GOPAL MUKERJEE *v.* GIRINDRA NATH MUKERJEE. **41 Cal. 793=18 C.W.N. 673=12 A.L.J. 711=19 C.L.J. 620=16 Bom. L.R. 425=16 M.L.T. 68=27 M.L.J. 123=1 L.W. 533=23 I.C. 162=(1914) M.W.N. 430 (P.C.)**

[On appeal from 13 C.W.N. 201=4 I.C. 513=8 C.L.J. 453.]

——*Limited owner—Alienation—Distinction between—Reversioner when entitled to challenge compromise.*

A Hindu became a convert to Mahomedanism in 1845. His son who was a Hindu predeceased him and the father died soon after. There were disputes regarding the succession to the properties between the son's daughters and the father's daughter's son. In 1860 a compromise was made under which the daughters of the son obtained from the Court of Wards possession 8½ annas share of the property and the convert's heir-at-law 7½ annas share. In

a suit for ejectment after the death of the surviving daughter by the son's reversionary heirs on the ground that the defendants who were purchasers from the convert's heir at law, claimed under an alienation from the daughters without justifying necessity. *Held*, that the compromise was a family settlement and not an alienation and the defendant's did not derive title from the daughters. The compromise was based on the title of the parties existing antecedent thereto and acknowledged and defined thereby. 19 A. 187, Rel. (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN. **33 All 356=38 I.A. 87=15 C.W.N. 515=8 A.L.J. 532=13 C.L.J. 575=13 Bom. L.R. 427=10 M.L.T. 23=(1911) 1 M.W.N. 432=10 I.C. 477=21 M.L.J. 645 (P.C.).**

——*Limited owner.*

Under a family settlement the share allotted to a limited owner is an absolute estate. (*Wallis*, C.J. *and Phillips*, J.) RAMASAMI NAIDU *v.* GOMATHI. **33 I.C. 521.**

——*Limited owner—Compromise.*

In some instances compromise by a limited owner may amount to family settlement; in other cases, they cannot be placed on a higher footing than they would be as contracts or alienations. (*Spencer and Seshagiri Aiyar*, JJ.) BANGARAYEDU *v.* PERAYYA SASTRI. **(1915) M.W.N. 810=30 I.C. 927=2 L.W. 1025.**

——*Limited owner—Reversioners.*

The true test to be applied to a transaction, challenged by the reversioners as an alienation not binding upon them, but which is alleged to be a family settlement, is whether the alienee derives title from the holder of the limited interest or life-tenant. There may be a family arrangement between heirs or possible claimants by inheritance but there can be no family arrangement as between legatees or alienees to which the reversionary heirs are not parties. (*Kanhaiya Lal*, J.C.) BHUSHAN *v.* DEO NARAIN. **34 I.C. 82.**

——*Limited owner—Grant to widow—Nature of estate.*

Where as the result of a compromise by the executors of the will of a Hindu testator who had bequeathed to certain relatives profits of certain property in fixed shares from generation to generation the widow of a maintenance holder who had died before the compromise got a share: *Held*, she took only a life estate as she took the property in a different quality from males. 5 A.L.J. 590, 10 Mad. 1 Foll. (*Lindsay*, A.J.C.) DURGA SHANKAR *v.* RAM RATAN. **13 I.C. 544.**

——*Limited owner—Widow and Reversioner.*

A limited owner can bind the reversion by a compromise, in which each party takes a share of the family property, and under which each gets an independent title to his

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share as admitted by the other. But it must be shown that the limited owner acted *bona fide* and for the preservation and benefit of the estate. When there is doubt as to whether a transaction is alienation or compromise of doubtful claim, the test is to see whether the alienee gets title from the limited owner. If there was some kind of pre-existing title and it was perfected or set at rest by the transaction, the transaction is a compromise of doubtful claim. If a fair compromise is arrived at, to preserve the harmony and honour of the family, it will be upheld by the Court, though it rests on not quite satisfactory grounds. But the right compromised must at least be such as to form the subject-matter of a claim. The right of a Hindu reversioner is a naked possibility and cannot form the basis of a claim. (*Das and Adami*, JJ.) BHAGWATI KUER *v.* JAGDAM SAHAY. **62 I.C. 933 = 2 Pat. L.T. 471.**

———*Limited owner—Rights of—On partition.*

In a compromise for partition between coparceners, certain property was given to a widow absolutely in the same manner as if the property had been partitioned under a decree. The widow took an absolute interest. (*Pratt*. J.C. *and Cohen*, A.J.C.) AMIBAI *v.* MOOSO RAHIMTOOLA. **10 I.C. 982 = 4 S.L.R. 271.**

Meaning and Tests of.

———*Meaning and tests of—Where operative.*

A family arrangement, to be operative must be without fraud and will not be supported if founded on mutual mistake or if either party has been misled by the concealment of material thing. The Court should not scan with nicety the quantum of consideration in a deed of family settlement. (*Mookerjee and Buckland*, JJ.) SATIS *v.* KALIDASI. **65 I.C. 677 = 34 C.L.J. 529.**

———*Meaning and test of—Alienation—Distinction between.*

In a compromise and in alienation there is a transfer of interest but in a compromise, Courts are concerned only with the *bona fides* of the settlement and in alienation with justifiable necessity. 33 A. 356; 27 M.L.J. 149 ; 31 M. 474, Foll. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATA RAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30 = 38 I.C. 270 = 5 L.W. 482.**

———*Meaning and tests of—Award is not enforceable as a family settlement.*

A family settlement implies a mutual settlement by certain contending parties belonging to the same family of some disputed claims and rights and an award of arbitrators is not a settlement of that character. It is the decision of a tribunal constituted by the contending parties for the settlement of their dispute and in so far as it is a valid and lawful award, it is binding on the parties to the arbitration proceedings and their successors.

FAMILY ARRANGEMENT— Minors, when bound.

Whether such an award is binding on persons whose interests are analogous to those of the parties to the arbitration proceedings is a matter which is not capable of an inflexible answer. In each case it has to be determined whether the person who agreed to the reference to arbitration was seeking to assert a right common to himself and others and had acted fairly in representing those whose interest he had undertaken to protect. (*Kanhaiya Lal and Dalal*, A.J.Cs.) CHAUDHRAIN ZARIF-UN-NISSA *v.* CHAUDHRI SHAFIQUZ ZAMAN. **26 O.C. 133 = 1923 Oudh 185.**

———*Meaning and tests of.*

Where the several members of a family settle a dispute each one reliquishing all claim to the property not falling to his share and recognising the right of the others as they had previously asserted it to the portion alloted to them respectively, the transaction is called the family arrangement and must be upheld as such. The test of such an arrangement is the recognition of a pre-existing title and not a derivation of title from each other. (*Lindsay*, J.C.) DALIP SINGH *v.* KASHI NATH. **24 I.C. 542 = 17 O.C. 108.**

———*Meaning and tests of— Real meaning ought to be ascertained—Effect to be given as much as possible.*

The Courts should ascertain the real meaning of the parties to family settlements and should give effect to as much of it as possible if the whole cannot be given effect to. (*Evans*, J.C. *and Lindsay*, A.J.C.) MAHOMED HASHIM ALI KHAN *v.* SADI HUSENKHAN. **13 I.C. 882 = 14 O.C. 256.**

———*Meaning and tests of—Binding nature-Principles applicable.*

A fair compromise of family disputes will be upheld by a Court though resting on grounds which as between strangers may not be satisfactory. The rights compromised should be of such a nature that they could at least have formed the subject-matter of a claim, though a doubtful one. When entered into by a limited owner, in order to bind reversioners, it must be a fair and honest one representing the estate and for its protection. The principle applies not only for preserving the peace but also for preserving the property. In the absence of proof of mistake, inequality of position, undue influence, fraud, etc., a family arrangement made in settlement of a disputed or doubtful claim is valid and binding and cannot be set aside merely on the basis that one party got more or less than that he would have legally got. When minors are sought to be bound, it must be shown it was for their benefit. (*Bucknill and Ross*, JJ.) RAM BAHADUR SEN *v.* GANESH BHAGAT. **2 Pat. 554 = 1924 P. 49.**

Minors, when bound.

———*Minors, when bound—Setting aside.*

A *bona fide* settlement of a family dispute which has been fairly arrived at and acted upon

FAMILY ARRANGEMENT—Minors, when bound.

cannot be set aside by a minor party unless vitiating circumstances are alleged and proved. (*Daniels*, J.) RADHA KRISHNAN SHUKUL *v.* NOKH LAL SHUKUL. **21 A.L.J. 488 = L.R. 4 A. 481 = 1923 All. 566.**

———*Minors, when bound—Dispute, claim.*

In the absence of proof of mistake, inequality of position, undue influence, coercion, fraud or any similar ground, a partition or family arrangement made in settlement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from. If the parties have settled a dispute, such settlement will not be set aside on the ground that it gave to one of them more than what he ought possibly to have received if he had taken the judgment of the Court upon the matters in difference between them. The Courts will not be disposed to scan with much nicety the amount of consideration. There is nothing in this doctrine of family agreements opposed to the general principle that, when it is sought to bind a minor by an arrangement entered into on his behalf, it must be shown that the agreement was for the benefit of the minor and that no improper advantage has been taken of the minor's position. When there is no defect, the settlement of doubtful claim is of as much advantage to a minor as to an adult and where a genuine dispute has been fairly settled the dispute cannot be reopened on the ground that one of the parties to the family arrangement was a minor. (*N. R. Chatterjee and Newbould*, JJ.) KERAMUTULLA MEAH *v.* KEAMUTTU-ALLAH MEAH. **49 I.C. 886 = 23 C.W.N. 118.**

———*Minors and sons, when bound.*

Family arrangements, or references to arbitration entered into in good faith by the manager of a joint Hindu family or by a father, bind the other members of the minor sons in the absence of fraud or other good reason the contrary. (*Chevis and Scott-Smith*, JJ.) DWARKA DAS *v.* KISHAN KISHORE. **2 Lah. 114 = 61 I.C. 628 = 3 Lah. L.J. 349.**

———*Minors, when bound—Test to be applied to.*

Tests to be satisfied before family compromises entered into on behalf of minors will be upheld are :—(1) There must be a full disclosure of all material circumstances in the knowledge of the parties thereto whether the information withheld was asked for by the other contracting parties or not, (2) all the members of the family should have been treated impartially, (3) if the parties are not on equal terms but one of them stands in such relation to the other as renders it incumbent on him to give a fuller account of the matter or question in dispute than he has done, the Court, although no intentional fraud may be importable to such person, will not support the compromise, (4) A family arrangement will not bind a minor if it is unconscionable in any way. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) ABDUL HUSSAIN *v.* MAHOMED IBRAHIM. **3 L.W. 379 = 35 I.C. 243 = 19 M.L.J. 346.**

FAMILY ARRANGEMENT—Proof.

———*Minors, when bound—Guardian relinquishing rights.*

Relinquishment of minor's property of considerable value by guardian for insignificant sum does not bind the minor, nor it is valid as family settlement. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) VISVANATHASWAMI *v.* KAMULU AMMAL. **(1915) M.W.N. 968 = 2 L.W. 1214 = 19 M.L.T. 286 = 31 I.C. 838 = 30 M.L.J. 481.**

———*Minors, when bound—When binding on all members.*

Where the major member of a family enters into a family arrangement with full knowledge of all facts for themselves and on behalf of the minor members fully represented by their natural guardians such an arrangement is binding on the minor members in the absence of fraud though certain doubtful claim had been admitted as valid by the guardians of the minors. (*White*, C.J. *and Sadasiva Aiyar*, J.) PRAKATERI *v.* KORAM. **14 I.C. 295 = (1912) M.W.N. 532.**

———*Minors, when bound.*

A *bona fide* compromise constituting a settlement between the members of a family is binding on the minor members of the family. (*Sundara Aiyar and Spencer*, JJ.) ANANTNARAYANA AIYAR *v.* SAVITRI AMMAL. **36 Mad. 151 = (1912) M.W.N. 59 = 11 M.L.T. 63 = 13 I.C. 488 = 22 M.L.J. 231.**

Mistakes, effect of.

———*Mistakes, effect of—Relief.*

Unequal division of property is liable to be set aside for mistake but not where parties accept it with full knowledge. (*Prideaux*, A.J.C.) WASUDEO *v.* VITHAL. **55 I.C. 422.**

Proof.

———*Proof—Binding nature of.*

In the absence of proof of mistake, inequality of position, undue influence, coercion, fraud or like ground, a partition or family arrangement made in settlement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from ; and this principle is applicable where some of the members of the family are minors or where the settlement has been effected by a qualified owner whose act will bind the reversioners. (*Mookerjee and Panton*, JJ.) KUSUM KUMARI *v* DASARATHI. **67 I.C. 210 = 34 C.L.J. 323.**

——— *Proof—Mutation petition.*

Revenue Court's order in mutation proceedings cannot of itself confer any title. A compromise petition in a Revenue Court, on which mutation is based is admissible though unregistered as proof of family arrangement

FAMILY ARRANGEMENT—Registration if necessary.

not as conferring any title in future but as a recognition of the previous titles. The petition, however, must be construed to determine its real meaning. (*Lindsay*, J.C. *and Stuart*, A.J.C.) SATROHAN LAL *v.* NAGESHAR PRASAD. **19 O.C. 75=35 I.C. 770=3 O.L.J. 339.**

Registration if necessary.

———*Registration, if necessary.*

A family settlement of disputed claims, which proceed on the assumption of an antecedent title of some kind in the parties which it merely acknowledges or defines, does not involve a conveyance of property by one party to another and does not fall within the purview of any of the provisions of the Transfer of Property Act which require an instrument in writing. 33 All. 356 (P.C.) Ref. (*Piggott and Kanhaiya Lal*, JJ.) BALDEO SINGH *v.* UDAL SINGH. **43 All. 1=18 A.L.J. 877=58 I.C 732=2 U.P.L.R. (All.) 202.**

———*Registration—Validity.*

Per *Richards*, J.—A family arrangement, affecting right in immoveable property above Rs. 100 must be registered. Per *Tudball*, J. A *bona fide* and non-fraudulent family arrangement acted upon by all parties should be respected by Courts, but if a document purports to extinguish one's title, it must be registered. (*Richards*, C.J., *Tudball and Rafique*, JJ.) JAGRANI MISRAIN *v.* BISHESHAR DUBE. **38 All. 366=35 I.C. 701=14 A.L.J. 449 (F.B.).**

Transfer of Property, whether essential.

———*Transfer of property whether essential.*

Transfer by gift is not the only means of creating title under the Hindu Law apart from inheritance or succession. If the persons entitled to a property are willing to treat a near relation as a co-sharer out of affection, and give up their claim to an exclusive right they can do so without a registered deed; the act if unequivocal creates a title in favour of the person who is taken in as a co-sharer. (*Holmwood and Chatterjee*, JJ.) GIRHI RANI MISRANI *v.* CHANDRA LAL KANATH. **17 I C. 885=17 C.W.N. 62.**

———*Transfer of property, whether essential—Release—Absence of words of conveyance.*

A release deed whereby the releaser simply undertakes to vacate his house may be operative as a *bona fide* settlement of a family dispute despite the absence of words of conveyance. (*Benson and Munro*, JJ.) MUTHUSAWMI PILLAI *v.* GOVINDASAWMI PILLAI. **9 I.C. 267=9 M.L T. 342.**

———*Transfer of property, whether essential—Effect.*

To constitute an effective family arrangement there need not be any formal contract between the parties, 38 A. 356; 5 B.H.C.R. 128; 3 Agra H.C.R. 82; 2 Ch. A.C. 294, Ref. Such arrangements are given effect to, not because they amount to transfer of property, but because they constitute binding agreements between the parties from which the law will not allow them to withdraw. (*Lindsay*, C.J. *and Stuart*, A.J.C.) SATROHAN LAL *v.* NAGESHAR PRASAD. **19 O.C. 75=35 I.C. 770=3 O.L.J. 339.**

FAMILY SETTLEMENT.

———*Registration.*

When a suit is disposed of according to the settlement which contains matters outside the scope of the suit, then registration of that settlement is not necessary. (*Das and Adami*, JJ.) ARUNBATI KUMARI *v.* RAM NIRANJAN. **58 I.C. 299=2 P.L.T. 38.**

FATAL ACCIDENTS ACT (XIII of 1855.)

———*Damages for causing death—Finding of Criminal Court.*

To establish civil liability under Act XIII of 1855 against any person, it must be proved either that he actually committed the wrongful act himself, or at the least, that he actively aided or abetted its commission and so took part directly in causing it. It is not enough that he knew that the act was likely to be committed or that it was committed in the prosecution of a common object. The findings of a Criminal Court are not relavant in a Civil Court but the criminal proceedings may be referred to test the evidance adduced in the civil suit. 56 P.R. 1905 Dist. (*Kensington and Chevis*, JJ.) HARIA *v.* BASANTH KAUR. **8 P.L R. 1912=128 P.W.R. 1912=16 I C. 491=117 P.R. 1912.**

———S. 1—*Damages awarded — Court's power to distribute.*

Under Act XIII of 1855 the Court has powers to divide damages claimed and awarded between some only of the parties for whose benefit the claim is made. (*Richardson and Suhrawardy*, JJ.) SYED SADAQU REZU *v.* KHOSHMOHINI DASI. **1922 Cal. 317.**

———*Death caused by wrongful act—Right of heirs.*

Where a death is caused by wrongful act, the right of heirs of deceassed to sue for damages is governed by the principle of the Act even where the Act is not in force. (*Kotwal and Macnair*, JJ.) RAKHMIA BAI *v.* DHANRAJ. **64 I.C. 311.**

———S. 1—*Damages—Quantum—Basis of assessment.*

In a claim for damages under the Fatal Accidents Act the reasonable expectation of pecuniary advantage by the relatives remaining alive may be taken into account by a Jury and damages assessed as the probable pecuniary loss thereby occasioned. The fact that the deceased in some way provoked the quarrel as a result of which he died, is immaterial so far as regards the claim for damages under S. 1 of the Act. (*Abdul Raoof and Abdul Qadir*, JJ.) PIARA RAM *v.* BEHARI RAM. **69 I.C. 354.**

FATAL ACCIDENTS ACT (XIII of 1855), S. 1.

——S. 1—*Compensation—Brother of a murdered man.*

A co-parcener of the murdered man is not entitled to compensation under the Act. Compensation should be awarded looking to the members of the family of the deceased. (*Rattigan and Jones, JJ.*) BISHUNDAS *v.* RAM LABHAYA. **105 P.R. 1915=32 I.C. 18=187 P.W.R. 1915.**

——S. 1—*Compensation for death caused by railway accident—Discretionary with Court to apportion among relatives—Circumstances to be taken into consideration—Child—Meaning.*

In cases where compensation is awarded by a Railway Company before the death of a person in an accident, the discretion rests with the Court to apportion the amount of compensation among the various relatives of the deceased and in exercising that discretion the Court ought to see that by far a large share is given to persons dependant entirely on the deceased for protection, taking into consideration also the equities the others may be entitled to. For purposes of awarding compensation under S. 1 of the Fatal Accidents Act a son adopted after the death of the deceased is not a 'Child' within the meaning of the section. (*Rattigan and Scott-Smith, JJ.*) SHRI GOPAL *v.* AMBA DEVI. **26 P.W.R. 1914=122 P.L.R. 1914=22 I.C. 846=52 P.R. 1914**

——S. 1—*Test of injury caused—Reasonable expectation of pecuniary advantage.*

The test of injury under S. 1 of the Act is not the legal liability alone, but the reasonable expectation of pecuniary advantage by the deceased's remaining alive. The reasonableness of the expectation is largely founded upon a record of pecuniary benefit received in the past and there must be something more than a mere speculation in the future. 16 B. 254, Expl. (*Scott-Smith and Agnew, JJ.*) SECRETARY OF STATE *v.* GOPAL SINGH. **112 P.R. 1913=186 P.W.R 1913=20 I.C. 425=284 P.L.R. 1913.**

——S. 2—*Scope.*

Section 2 of Act XIII of 1855 has no application to a suit instituted against the wrongdoer. 13 B. 677; 28 M. 487, Foll. (*Benson, O.C.J. and Abdur Rahim, J.*) TIRUMALA NAGABHUSHANAM *v.* SRI RAJAH VENKATADRI. **23 M.L.J. 285=(1912) M.W.N. 899=17 I.C. 226=12 M.L.T. 383.**

FAZENDARI.

See LAND TENURE, FAZENDARI.

FERRIES ACT (IV of 1878).

——S. 22—*Servants of lessee collecting excessive toll without authority—Liability of.*

A servant of a lessee of a ferry who makes unauthorised and extortionate collections from passengers, acts beyond the scope of his authority, and is liable for an offence under S. 22 of the Act but the lessee is not liable as he took no part in the extortion. 24 B. 423,

FIRM.

Dist. (*Tudball, J.*) EMPEROR *v.* BEHARI LAL. **34 All. 146=13 I.C. 101=13 Cr.L.J. 8=8 A.L.J. 1324.**

FERRIES ACT (I of 1885).

——S. 11—*District Magistrate—Power to establish subsidiary ferry—Interference with private rights.*

A proprietor of a village is entitled to ask the Court to restrain any unauthorised intrusion on his property, committed by even the Secretary of State for India, who has to justify his action under some statute. The District Magistrate has no jurisdiction to establish a subsidiary ferry beyond two miles from the *ghat* of the public ferry. There is a clear distinction between public ferry which under S. 6 can be established only by the Lieutenant-Governor, and a subsidiary ferry, which under S. 11 can be established by the District Magistrate and which is therefore a private ferry. (*Dass and Adami, JJ.*) PARDIP SINGH *v.* THE SECRETARY OF STATE FOR INDIA. **5 Pat. L.J. 500=1 Pat. L.T. 395=57 I.C. 516=2 U.P.L.R. (Pat.) 181=1920 Pat. 297.**

FERRY.

See also (1) EASEMENT.
(2) EASEMENTS ACT.

——*Right to—Crown grant.*

It is not open to a person to set up a rival ferry in opposition to one who has been exercising the right for a long time unless the former could show a Crown grant expressly or by implication. (*Knox, J.*) JWALA SINGH *v.* ABDUL RAZAK. **29 I.C. 692=13 A.L.J 775.**

——*Right of—Acquisition—Prescription.*

A right to a ferry between two villages can be the subject of a grant from the Crown and the grant can be implied from the facts proved. The right cannot be acquired by prescription. 18 C. 652, Rel. (*Macleod, C.J. and Cayajee, J.*) SHAMA DURGAJI BHOI *v.* GANGADHAR NARAYAN. **24 Bom. L.R. 445=67 I.C. 419=(1922) Bom. 245.**

FICTITIOUS TITLE.

See T. P. ACT, S. 53.

FIDUCIARY RELATIONSHIP.

See (1) EVIDENCE ACT, S. 111.
(2) TRUSTS ACT, Ss. 88, 94.
(3) CONTRACT ACT, S. 16.

FINAL ORDER.

See C. P. CODE, Ss. 2 (2), 11, 104, 109.

FINDING OF FACT.

See C. P. CODE, S. 100.

FIRE INSURANCE.

See INSURANCE.

FIRM.

See (1) C. P. CODE, O. 21, Rr. 49, 50 and O. 30.
(2) CONTRACT ACT, Ss. 239—266.
(3) CORPORATION.
(4) COMPANY.

FISHERY.

———*Jalkar—Grant by Government—Navigable river—Change of course—Right to follow the river—English Law.*

A grantee of a jalkar (exclusive fishery) from the Government in Bengal, in a tidal and navigable river, can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the subjacent soil belongs to the Government or a private proprietor as being the site of the river's recent encroachment and whether shifting of the channel is gradual or is the result of sudden eruption. In this respect the law in India is different from the English Law. The rule in England which connects the subject's right to an exclusive fishery in tidal and navigable rivers within the limits of the Crown's ownership of the subjacent soil is the result of conditions partly historical and partly geographical which have no counterpart in Bengal. (*Lord Sumner*, J.) SRI NATH ROY *v.* DINBANDHU SEN. **42 Cal. 489 = 18 C.W.N. 1217 = (1914) M.W.N. 651 = 1 L.W. 783 = 16 M.L.T. 319 = 12 A.L.J. 1193 = 20 C.L.J. 385 = 16 Bom. L.R. 901 = 23 I.C. 467 = 41 I.A. 221 (P.C.).**

———*Right to fish by member of public.*

The right of a member of the public in fishing by means of stakes would not pass by a grant or descent and consequently a member is entitled to be protected from improper interference with his right of fishing as a member of the public. (*Marten*, J.) LAKSHMAN *v.* RAMJI. **23 Bom. L.R. 939.**

———*Public navigable river—Burden of proof.*

Where a right to fish is claimed in a public navigable river on the basis of prescription or immemorial custom, the plff. has first to prove that the river is a public navigable one and that there was a grant of the bed to the *Zemindar* at the time of permanent settlement or that there was a grant of several fisheries in favour of the *Zemindar* though the channel was public and navigable. (*Mookerjee*, A.C.J. *and Fletcher*, J.) BHAGIRATH MALO *v.* ANANDA PROSONNA MUKHAPADDYA. **60 I.C. 778 = 33 C.L.J. 229.**

———*If passes title to bed of river.*

An exclusive right of fishery in a non-navigable river does not of itself pass the right to the soil in the bed of the river. (*Fletcher and Shamsul Huda*, JJ.) MAHARAJA OF BURDWAN *v.* SECRETARY OF STATE FOR INDIA. **46 Cal. 390 = 46 I.C. 305 = 22 C.W.N. 872.**

———*Rights of.*

One co-owner cannot maintain a suit against the lessee of a 'bil' from another co-owner for the recovery of the portion of the value realised by him by the sale of the fish caught, unless the co-owner, was obstructed by the lessee in the enjoyment of his right or could not get ample fish in the 'bil' to satisfy his right

FISHERY.

of fishery. (*Fletcher and Shamsul Huda*, JJ.) RUDRA NATH ROY *v.* JOY CHAND KAIBARTNA. **46 I.C. 280.**

———*Union of two rivers—Fishery owners' right.*

Where two rivers mingle, the fishery rights in the two rivers cannot be said to mingle and the right depends upon the fact whether the invading river has retained or lost its identity, though in extreme cases the matter can be easily settled. 42 C. 489 (P.C.) Dist. (*Chatterjee and Beachcroft*, JJ.) SARDA PRASAD ROY *v.* MUHAMMADYUSUF. **24 C.L.J. 153 = 34 I.C. 228 = 21 C.W.N. 1007.**

———*River shifting its course*—Dobas *in old bed.*

Where a river shifts course leaving *dobas* in its old bed, the grantee of the exclusive right of fishery in the river retains his right over such *dobas* so long as the latter continue to be incommunication with the main channel throughout the year. (*Carnduff and Richardson*, JJ.) HEM CHANDRA CHAUDHURI *v.* SECRETARY OF STATE FOR INDIA. **23 I.C. 186.**

———*River bed—Right claimed in other waters—Court how to adjudge—Jalker—Shifting course of river—Right to follow river.*

The right of fishery (Jalkar) in a river, extends over all the waters which form part of the river. The jalkar rights of a river extend to waters in the river bed though they are not connected with the flowing stream throughout the year. The grantee of a jalkar may fish in all wrters comprised within the banks of the river though the particular sheets of water may during a part of the year be disconnected from permanent current. (*Jenkins*, C.J., *Harrington and Mookerjee*, JJ.) AHMADI BEGUM *v.* MAHASY TARAKNATH GHOSH. **17 C.W.N. 1173 = 21 I.C. 233 = 18 C.L.J. 399.**

———*Public navigable waters—Government or proprietor of estate whether entitled.*

The Government is *prima facie* the owner of fishery right in all public navigable waters whether tidal or not. But the rights of fishery in small rivers which are tidal but not navigable belong to the proprietors through whose estates they run. (*Richardson and Newbould*, JJ.) SHRIMANTA BAGDI *v.* NIRANTAR JELIA. **19 I.C. 893 = 17 C.W.N. 1108.**

———*Private rights—How acquired—Prescription.*

Private rights of fishing in public waters may be acquired either by a grant from the Crown or by prescription from which a grant may be presumed. *Quaere*—Whether exclusive rights can be acquired in a tidal or navigable river by proof of mere enjoyment in the manner provided by S. 26 of the Limitation Act. A person to acquire the right of fishery, by prescription must show that he had an uninterrupted enjoyment of it openly, publicly and peacefully for over the statutory period; but where such an enjoyment was in exercise

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of a common right which he shared with others, he should show that his user was in assertion of a higher right than the general right, in himself and for his exclusive benefit. (*Coxe and Teunon*, JJ.) ABHOY CHARAN *v.* DWARKA NATH MALO **39 Cal. 53 = 11 I.C. 180 = 15 C.W.N. 972.**

———*Landlord and tenant—Lost grant claiming exclusive right—Declaration and injunction.*

In a suit by plaintiff for a declaration of his exclusive title to the fishery rights in a tank and for an injunction to restrain the defendants from interfering with his rights, defendants claimed the right to the fishery rent and the defendants proved the long and continued enjoyment pleaded by them. *Held*, that it was for the plaintiff to establish his title in defiance of the defendants' claim arising from it. It was not enough for the plaintiff to prove his ownership of the tank and rely simply on the presumption that the right of fishery being an incident of the right of ownership vested in him. Per *Krishnan*, J.—Where the facts required for raising a presumption of a lost grant were stated and evidence was all taken and the Courts have given their opinion on the evidence, it is not necessary for the High Court in second appeal to raise a specific issue and call for a fresh finding. It may well be that, where a right of fishery was claimed as first vested in the ryots of a village as a body, no question of unreasonableness will arise. The right claimed is a right in gross. (*Spencer and Krishnan*, JJ.) SUBRAMANIAN CHETTY *v.* VIJIA RAGHUNATAN PILLAI.

22 M.L.T. 523 = 41 I.C. 419 = 6 L.W. 769.

———*Grant of—Rights of grantee to the soil—Grant of soil.*

A proprietor can lease out a fishery without giving any rights to the soil or the bed upon which the water lies and he can then let out the land subject to the rights of the lessee of the fishery. If, on the other hand, he lets out the land first, he cannot claim the right to the water and fish that come upon the land afterwards. The landlord may reserve the right of fishery when letting out the land, but such a reservation is, strictly speaking, a re-grant of the right by the tenant to the landlord. (*Mullick and Ross*, JJ.) MRS. HENRY HILL & Co. *v.* SHEORAJ RAI. **3 P.L.T 53 = 1922 Pat. 195 = (1922) P. 9.**

FISHERIES ACT (II of 1889).

———S. 3—*Conviction under*—Bona fides—*Question of possession of fishery.*

A person fishing in a river at the instigation of the Zemindar between whom and the Government there was a dispute as to the possession of the fishery, could not be convicted under S. 3 unless his *bona fides* had been properly investigated and the question of possession enquired into. (*Teunon and Huda*, JJ.) RADHA KAIBERTA *v.* EMPEROR.

19 Cr. L.J. 769 = 46 I.C. 689 = 22 C.W.N. 742.

FOREST ACT (VII of 1878), S. 6.

FIXTURES.

See T. P. ACT, Ss. 3, 108.

FOOD, ADULTERATION OF.

See MUNICIPAL ACTS.

FORBEARANCE TO SUE.

See CONTRACT ACT, Ss. 2, 28.

FORECLOSURE.

See C. P. CODE, O. 34, Rr. 2, 3.

FOREIGN COURT.

See (1) C.P. CODE, S. 13.
(2) EVIDENCE ACT, Ss. 40, 43.

FOREIGNERS ORDINANCE (III OF 1914).

———Ss. 3 and 8—*Change of residence—Jurisdiction.*

The notification by the Local Government compelling the foreigners to notify their change of residence is not *ultra vires* when such powers are delegated. Mere casual journey for a couple of nights away from home is no change of residence. (*Coutts-Trotter*, J.) *In re* CHARLES GEORGE HEDANGAR. **32 I.C. 659 = 17 Cr. L J. 67.**

FOREIGN JUDGMENT.

———*Suit on—Indian currency—Decree—Rate of exchange.*

Where a suit is brought in India on a foreign judgment awarding damages in sterling the rate of exchange to be adopted should be the rate prevailing at the date of the judgment of the English Court. (*Fawcett*, J.) MADHAVJI VISRAM *v.* RAMNIKLAL. **47 Bom 487 = 25 Bom. L.R. 173 = 1923 Bom 437.**

FOREIGN JURISDICTION ACT (1890).

———S. 4 (1)—*Foreigner—British Military Service—Jurisdiction of British Courts established in Foreign Country.*

Where an Afghan, a national born subject of the Ameer of Afghanistan was enlisted and enrolled as a Soldier in a British Indian Regiment after taking the oath of allegiance to His Majesty, and he committed an offence in the Straits Settlements, *Held*, that the Supreme Court at Hong Kong had jurisdiction to try him for the offence. The evidence of the Judge of the Provincial Court was admissible to show that the Hong Kong Court had jurisdiction over British Subjects in the place where the offence was committed. An alien enlisted by the British Crown as a Soldier is entitled to the same rights and subject to the jurisdiction of the same Courts as British enlisted subjects. (*Lord Sumner.*) IBRAHIM *v* EMPEROR. **18 C.W.N. 705 = 15 Cr. L J 326 = 23 I.C. 678 = 1 L.W. 989 (P.C.)**

FOREST ACT (VII OF 1878.)

———Ss. 6, 7 and 9—*Government property—Land part of permanently Settled Estate—Applicability.*

Where the land is part of a permanently settled estate it is a private property and not

FOREST ACT (VII of 1878), S. 26.

the Government property within the meaning of the Forest Act and therefore cannot legally be subject of reservation under Chap. II of that Act. Ss. 6, 7, and 9 equally refer to land which is of the description mentioned in S. 3, that is the proceeding taken in respect of such land. (*Woodroffe and Suhrawardy*, JJ.) SECRETARY OF STATE *v.* ABDUL RAHAMAN. **1923 Cal. 77.**

——— **Ss. 25 and 31**—*Rules under—Hunting and shooting in reserved forest.*

Hunting and killing a tiger in a reserved forest even though it be for killing the tiger which killed the cattle of the accused, amounts to hunting. (*Shah Din and Marten*, JJ.) AMBIR SAHEB BALAMIYA PATIL *v.* EMPEROR. **42 Bom. 406=45 I.C. 514=19 Cr. L.J. 610=20 Bom. L.R. 384.**

——— **Ss. 25 (b) and 76**—*Punjab Government Notifications, No. 61, 26th January 1897, R. 28 and No. 437, 3rd October 1897, R. 1—'Sets fire to', meaning of.*

A person sets fire to a thing if he puts a match to it or sets it on the fire directly, and not if it catches fire as an indirect consequence of his act. The accused kindled a fire in his master's garden which spread to an unclassed forest, and then to a reserved forest. The accused should not be said to have set fire to either of the forests within the meaning of S. 25 (*b*). (*Johnstone*, C.J. *and Scott-Smith*, J.) RAO *v.* EMPEROR. **30 P.R. (Cr.) 1916=36 I.C. 138=17 Cr. L.J. 458=51 P.W.R. Cr. 1916=34 P.L.R. 1917.**

——— **S. 25 (d)**—*Applicability—Liability of licensee for agents' acts.*

A licensee under this Act would be liable criminally for every act of his agent done in carrying on the business delegated to him, if there is a breach of the condition of the license or any rule thereunder. If the owner of some cattle entrusts them to a greazier who takes them into a forest reserve to afford them better pasturage, the owner is not criminally liable but is only civilly liable. The words of S. 25 (*d*) clearly apply only to the person who does any of the acts mentioned therein. (*Stanyon*, A.J.C.) SAIYYAD RAHIM *v.* EMPEROR. **16 Cr. L.J. 485=29 I.C. 325=11 N.L.R. 76.**

——— **S. 25 (f)**—*Cutting trees—Felling of each tree—Distinct offence.*

A person felling a number of trees in a forest is guilty of as many offences under S. 25 (*f*) of the Forest Act as the number of the trees felled by him. (*Piggott and Walsh*, JJ.) EMPEROR *v.* RAGUNATH. **43 I.C. 577=19 Cr. L.J. 161.**

——— **S. 25 (l)**—*Hunting without a permit in a reserved forest.*

Where persons form a party and go without a permit to a reserved forest with the object of hunting, even those who do not shoot are

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punishable under S. 25. (*Banerjee*, J.) BARKAT ALI *v.* EMPEROR. **40 All. 88=42 I.C. 922=19 Cr. L.J. 10=16 A.L.J. 824.**

——— **S. 32**—*Criminal tresspass — Forest trees, cutting of—Penal Code, S. 447.*

A person entering a forest and cutting reserved forest trees cannot be convicted both under S. 32 of the Forest Act and under S. 447 of the Penal Code as the offence under the latter section is included in that under the former. (*Banerjee*, J.) RUP DEB *v.* EMPEROR. **20 I.C. 408=14 Cr. L.J. 424=11 A.L.J. 340.**

——— **Ss. 32, 34 and 55**—*Confiscation of produce—Conviction under S. 32.*

Where a person is convicted under S. 32 of the Act, the whole of the produce in respect of which the offence was committed must be confiscated and handed over to the Forest Department of the Government. (*Johnstone*, J.) EMPEROR *v.* SADAPUR. **I.P.R. (Cr.) 1912=15 P.W.R. (Cr.) 1912=13 I.C. 924=13 Cr. L.J. 172=37 P.L.R. 1912.**

——— **S. 41**—*Rules for Chittagong hill tracts.*

The rules apply to Government reserved forests and do not cover the case of a person who has obtained a lease of a forest in fee-simple. If he, therefore, removes bamboos from one portion of the estate to another he is not guilty under the rules. (*Chatterjee and Cuming*, JJ.) SATYARANJAN SEN GUPTA *v.* MOHAMMAD SARFARAJ. **57 I.C. 819=21 Cr. L.J. 659.**

——— **Ss. 41 (b) and 42**—*R. 4 framed by Government of Bombay under S. 41 (b)*—Ultra vires.

R. 4 of the rules for Sind framed by the Government of Bombay under S. 41 (*b*) of the Act, prohibiting the moving of timber from private land without a certificate from the holder or manager of such land, is *ultra vires*: consequently a conviction for a breach of that rule under S. 42 of the Act cannot stand. (*Pratt*, J.C. *and Crouch*, A.J.C.) MITHO *v.* EMPEROR. **35 I.C. 668=17 Cr. L.J. 364=10 S.L.R. 9.**

——— **S. 82**—*Plea of justification — Not raised.*

The plea of justification under S. 82 not having been raised in the pleadings in the Lower Court could not be allowed to be raised in appeal. S. 82 expressly provides that the sale proceeds should be applied first in discharging the amount due. (*Pratt*, J.C. *and Fawcett*, A.J.C.) CHANDIRAM KARAM SINGH *v.* SECRETARY OF STATE. **31 I.C. 436=9 S.L.R. 51.**

FOREST OFFICER.

See FOREST ACT.

FORFEITURE.

See (1) ACT OF STATE.
(2) CROWN.
(3) LANDLORD AND TENANT.
(4) T. P. ACT, S. 111.

FORFEITURE ACT (X OF 1859).

——S. 20—*Mortgagor and mortgagee—Confiscation by Government of mortgagee rights—Mortgagor not effected—Redemption—Limitation.*

Where the Government confiscated only the mortgagee rights of a certain person under the Act and granted it to the predecessors in title of the defendant, a suit by the mortgagor for redemption is not governed, for the purpose of limitation, by S. 20 of the Act. (1868) N.W.P. 11 Cr. 139, Rel. on. (*Lyle*, J.) YAKUB ALI KHAN *v.* LATU SINGH. **20 I.C. 362=11 A.L.J. 724.**

FORMA PAUPERIS.

See CIV. PRO. CODE, O. 33.

FORWARD CONTRACTS.

See CONTRACT ACT, Ss. 73, 83–92, ETC.

FOSTERAGE.

See MAHOMEDAN LAW.

FRAME OF SUIT.

See CIV. PRO. CODE.

FRAMING AND SETTING ISSUES.

See CIV. PRO. CODE.

FRANCHISE.

See MUNICIPAL ACTS.

——*Acquisition by adverse possession—Right to carry on a bazaar and levy dues thereon—Rights of Talugdar.*

The plaintiffs and their ancestors had been carrying on a bazaar in a certain locality in a village and had received various bazaar dues from persons carrying on business within the area. Several plots in the locality were seized by the talukdar's tenants and shades were built thereon. In a suit by the plaintiff against the tenants and the talukdar, *held*, that the plaintiff had acquired, as against the talukdar, by a long adverse possession, a right like a franchise, of carrying on the bazaar and of levying dues on the persons using it and the right had become valuable property, and that the talukdar could not interfere with the plaintiff's rights. (*Lindsay*, J.C.) SHAMBHU DAYAL *v.* CHANDRA SHEKHAR. **36 I.C. 725=3 O.L.J. 417.**

FRAUD.

See (1) C.P. CODE, SS. 11, 13 AND 47 AND O 6, R. 4, O. 21, R. 90, ETC.
(2) CONTRACT ACT, SS. 17, 19, ETC.
(3) DECREE, SETTING ASIDE.
(4) PRACTICE—FRAUD.

——**Party to Fraud—Relief.**

See T. P. ACT, S. 53.

——**Who may plead.**

See (1) CONTRACT ACT, SS. 19, 23.
(2) EVIDENCE ACT, S. 115.
(3) T. P. ACT, S. 53.

FRAUD IN COURT.

See C. P. CODE, S. 73, O. 21, R. 52.

FRONTIER CRIMES REGULATION (III of 1901).

FRAUD ON CREDITORS.

See (1) FRAUDULENT TRANSFERS.
(2) T. P. ACT, S. 53.

FRAUDULENT PREFERENCE.

See (1) PROV. INS. ACT, S. 37.
(2) PRES. TOWNS INSOLVENCY ACT, S. 56.
(3) T. P. ACT, S. 53.

FRAUDULENT TRANSFER.

See T. P. ACT, S. 53.

FREE CONSENT.

See CONTRACT ACT, S. 16.

FREEDOM OF RELIGION ACT (XXI of 1850).

See also CASTE DISABILITIES REMOVAL ACT.

——S. 1—*Conversion to Mahomedanism—Succession to.*

The Freedom of Religion Act (XXI of 1850) repeals the provision of Hindu and Mahomedan Law which inflict forfeiture of rights or property by reason of renunciation of religion, or expulsion from caste, but it does not give any person rights he never possessed under Hindu or Mahomedan Law, 33 A. 356, Referred to. (*Rigg*, J.) ASHA BIBI *v.* MA KYAW YIN. **64 I.C. 514=13 Bur. L.T. 217.**

FREIGHT.

See RAILWAYS ACT.

FRESH EVIDENCE.

See C. P. C., O. 41, R. 27.

FRESH SUIT.

See C. P. C., O. 23, R. 1.

FROM SERVICE.

——*Dismissal from service — Notice — Damages.*

The contract of service of master and servant in the absence of agreement or custom is terminable by a reasonable notice. Wrongful dismissal entitles the servant to sue for damages. (*Twomey*, J.) E. M. MOOLA *v.* K. C. BOSE. **9 Bur. L.T. 63=33 I.C. 981=8 L.B.R. 420.**

FRONTIER CRIMES REGULATION (III OF 1901.)

——**Ss. 8 and 60**—*Decree under S. 8—Civil Court cannot question validity—Suit pending in Civil Court—Effect.*

A decree passed under section 8 of Regn. III of 1901 whether passed wrongly or rightly is an actually subsisting decree and, under section 60 of the Frontier Crimes Regulation, it cannot be called in question or set aside by any Civil Court. The decree certainly cannot be set aside by a Civil Court. Even if the finding of the Civil Court conflicts with that decree, the decree could not be finally extinguished unless and until the Chief Commissioner had set it aside in the exercise of the

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powers of the revision. This however, is not the same thing as holding that the Civil Court cannot proceed at all with a suit which is before it, simply because some illegal proceedings under S. 10 has been taken after the suit. What the Civil Court is entitled to do is not to call in question the proceedings or the validity of the decree, but simply to ignore them. It is perfectly clear, that section 8 cannot, in any circumstances, legally come into operation at all when a civil suit is already pending. The Civil Court has entertained the suit with jurisdiction, so far as this question is concerned, to entertain it, and no illegal proceedings by any outside authority in contravention of the provisions of law could possibly affect its jurisdiction to continue the hearing of the case. An illegal proceeding under section 8, Frontier Crimes Regulation, cannot in any circumstances, oust the jurisdiction of a Civil Court to continue the trial of a civil suit which has been legally instituted before it prior to any proceedings under section 8, Frontier Crimes Regulation. (*Pipon*, J.C.) FIRM OF SHAM DAS BHIM SAIN *v.* FIRM OF KALU RAM BASHESHAR NATH.
72 I.C. 927.

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———*Doctrine of—in contracts.*

According to the doctrine of frustration, a subsequent event on contingency beyond the ken of the parties, for which none of them is responsible and for which they have not provided, may sometimes operate to avoid the contract. (*Sanderson*, C.J. *and Richardson*, J.) GOURI SHANKAR AGARWALLA *v.* H. P. MOITRA.
23 C.W.N. 573.

FULL BENCH.

See PRACTICE—HIGH COURT.

FUNERAL EXPENSES.

See (1) HINDU LAW.
(2) MAH. LAW.

FURTHER ENQUIRY.

See C. P. CODE, O. 41, Rr. 23, 25.

FUTURE INTEREST.

See T. P. ACT, O. 34.

GADABA OR GUDABA.

See GRANT—INAM.

GAMBLING.

See CONTRACT ACT, S. 23, 30 AND 65.

GAMBLING CONTRACT.

See CONTRACT ACT, S. 23.

GAMBLING IN LITIGATION.

See CONTRACT ACT, S. 23.

GAMING.

See (1) CONTRACT ACT, SS. 30 AND 65.
(2) GAMBLING ACTS, IMPERIAL AND PROVINCIAL.

GENERAL CIVIL COURTS' RULES—1911 Chap. XXI, R. 87.

GANJAM AND VIZAGAPATAM AGENCY RULES,

See AGENCY RULES.

GARNISHEE.

See also (1) C.P. CODE, O. 21, Rr. 46, 53, ETC.
(2) HIGH COURT RULES.

———*Cross-debt—Set off—Court-fee.*

A cross-debt due to the garnishee can be set off in his favour and the equity arising from the cross-debt can be set up without paying court-fee. (*Scott*, C.J. *and Batchelor*, J.) TAYABALI GHULAM HUSIEN *v.* ATMARAM SAKHARAM VANI. **38 Bom. L.R. 631 = 25 I.C. 375 = 16 Bom. L.R. 520.**

———*Debt due to estate of deceased—Share of heir.*

Debts due to the estate of a deceased person of whom the judgment-debtor is co-heir, are not proper subject for garnishee proceedings. If a garnishee order is improperly made, it should be set aside and the sum refunded to persons interested in the debt such as judgment-debtor's co-heirs. When such an order is set aside the refund may not be made into the Court. But the Court can decide the parties entitled to receive the money if all the parties are before the Court. (*Wallis*, C.J. *and Krishnan*, J.) HAJEE ABDULA SAHIB *v.* ALANJI ABDUL LATIF SAHIB. **39 M.L.J. 91 = 28 M.L.T. 34 = 57 I.C. 854 = 12 L.W. 70.**

———*Order—Stopping of payment.*

If a cheque is given in respect of a pre-existing debt and the drawee is served with a garnishee order, he is not bound to stop payment. (*Moore*, J.) ARUNACHALLAM CHETTY *v.* SOMASUNDARAM CHETTY.
12 I.C. 869 = 4 Bur. L.T 148.

———*—Rights of—Whether tenants bound to employ—*Wajib-ul-arz*—Entry in.*

A *wajib-ul-arz* recorded a Garpagari as a village servant whose duty was to ward off hail-stones by *Mantras* in lieu of a sheaf of corn from the tenants. *Held*, the entry did not make it obligatory upon the tenants to seek the garpagari's services and to pay for them. (*Mitra*, A.J.C.) SITARAM *v.* RAKHADU.
84 I C. 177.

GAYAWAL.

See (1) HINDU LAW—RELIGIOUS OFFICE.
(2) T. P. ACT, S. 6.

GAZETTE.

See EVIDENCE ACT, S. 81.

GENERAL CIVIL COURTS RULES—1911, Chap. XXI, R. 37.

———*—High Court pleader practising in Lower Court.*

Per *Chamier*, J.:—R. 36 applies even to a pleader of the High Court when he is practising

GENERAL CLAUSES ACT (X of 1897), S. 3.

in the Subordinate Courts. (*Richards*, C.J., *Tudball and Chamier*, JJ.) *In the matter of* HAR PRASAD SINGH. **17 I C. 539 = 13 Cr. L.J. 795**

GENERAL CLAUSES ACT (X OF 1897).

———*Words in singular if includes plural—Cr.P.C. Ss.* 234, 239.

Sections 234 to 238 by their terms, refer to the case of a single accused, and S. 239 is the section which deals with the case where more persons than one are accused. The existence of S 239 specifically dealing with the case of several accused, and the arrangement of the sections relating to joinder of charges, constitute such a repugnancy in the context as prevents the reading of the words "a person" in section 234 as including several persons, by applying the provision of the General Clauses Act that words in the singular shall include the plural. (*Kanhaiya Lal and Wallach*, JJ.) RAM PRASAD *v.* KING-EMPEROR.

22 Cr. L.J. 657 = 63 I.C. 419 = 19 A.L.J. 798 = 8 U.P.L.R. (All.) 151.

———S. 3—*Power of revising — Repealed statutes.*

To revive a repealed statute it is necessary under the above Acts to state the purpose in the Repealing Act, as in the case of English Repealing Acts, passed since 1850. (*Chaudhuri* J.) *In the matter of* JEWA NATHOO.

44 Cal. 459 = 37 I.C. 48 = 18 Cr. L.J. 64 = 20 C.W.N. 1327.

———S. 3 (13)—*Value, meaning—Exaggerated valuation.*

The word 'value' with reference to a suit, shall mean the value of the subject-matter of suit. Therefore ordinarily the value of the subject-matter of suit determines the Court of Appeal. The plff. cannot, by grossly exaggerating the valuation of the property in dispute, choose his own forum. (*Tudball and Sulaiman*, JJ.) BABAR SHAH *v.* MUHAMMAD RAFIQ. **62 I.C. 35.**

———S. 3 (20)—*Good faith—Contract Act.*

The definition of 'good faith' given in the Act does not expressly apply to the terms as used in the Contract Act, The definition of 'good faith' which is generally understood in civil law and which may be taken as a guide in construing that expression in the Contract Act, is that nothing is said to be done in good faith which is done without due care and caution, *i e.* care and caution expected of man of ordinary prudence. (*Parlett*, J.) MAUNG AUNG HU *v.* MAUNG SI MAUNG. **12 I.C. 809 = 4 Bur. L.T. 128.**

———S. 3 (25)—*Immoveable property—Kolhu fastened to the ground.*

A Kolhu (*i. e.* an iron sugarcane press) fastened to the ground is immoveable property as it could not be used effectively unless so fastened. (*Ryves*, J.) MUSIA KURMI *v.* SUB KARAN KURMI. **23 I.C. 250.**

GENERAL CLAUSES ACT (X of 1897), S. 3.

———S. 3 (25)—*Right of way—T. P. Act, S. 3—Immoveable property.*

The term 'immoveable property' in the General Clauses Act may include a right of way. But such right is not always necessarily included. It is not excluded by T. P. Act, S. 3. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA CHAUDHARI *v.* ALLEN J. DELANVEY.

34 I.C. 430 = 20 C.W.N. 1158.

———S. 3 (25)—*Right to immoveable properties—Malikana.*

Under the Limitation Act XIV of 1859 malikana was immoveable property, the right to which was lost by 12 years non-enjoyment. (*Chatterjee and Walmsley*, JJ.) MOHESRI PRASAD SINGH *v.* BAIJNATH AZARI.

21 I.C. 779 = 19 C.W N. 410.

———S. 3 (25)—*Standing crops—Immoveable property.*

Standing crops are immoveable property and an illegal attachment of the same is a trespass. (*White*, C.J., *Miller and Oldfield*, JJ.) KOTAGIRI VENKATARAMANUJAM *v.* PATIBANDA BASAVAYYA. **14 M.L.T. 225 = 25 M.L.J. 447 = 21 I C. 213 = (1913) M.W.N. 869.**

———S. 3 (25)—*Standing crops—Immoveable property.*

Standing crops are immoveable property under the General Clauses Act. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KOTAGIRI VENKATARAMANUJAM *v.* PATIBANDA BASAWARAYA, **23 M.L.J. 620 = 17 I.C. 185 = (1912) M W.N. 1222.**

———S. 3 (25)—*Fishery—Immoveable property*

A right to fishery is an interest in immoveable property. 24 C. 449; 19 C. 544, F. (*Mittra*, A J.C.) SITARAM *v.* PETIA.

43 I.C. 962 = 14 N.L.R, 35.

———S. 3 (25)—'*Land*' *as used in C. P. Code—Trees.*

The definition of 'land' given in the General Clauses 3 (26) 1897 Act must be applied to the word 'land' as used in the C,P.C. and therefore 'land' in C.P,C. includes trees. (*Stanyon*, A.J.C.) SUKHANDAN *v* MANAKCHAND. **10 I.C. 473 = 7 N.L.R. 63.**

———S. 3 (25)—*Mortgage debt—Immoveable property.*

A simple mortgage debt is to be attached under O. 21, R. 46, C.P.C. as a debt and not as immoveable property under O. 21, R. 54, C.P.C. (*Kanhaiya Lal and Daniels*, A.J.Cs.) SHAH MOHAMED YUSUF *v*, LAXMINARAYAN. **6 O.L.J. 49 = 30 I.C. 157 = 21 C.C. 400.**

———S. 3 (25)—*Charge on immoveable property.*

Money charged on immoveable property includes money charged on rent and profits of land and the specification of the property on the rental of which (or out of the rents and profits of which) a certain money allowance

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was to be be calculated, indicates the stock out of which it was to be paid and was therefore a charge on the property. (*Kanhaiya Lal*, A.J. C.) RAM JIWAN *v.* JADUNATH.
18 O.C. 380=33 I.C. 553=3 O.L.J. 20.

———S. 3 (25)—*A benefit arising out of land.*

The expression covers a right to receive cash nankar from the profits of a village. (*Kanhaiya Lal*, A.J.C.) DEPUTY COMMISSIONER, FAIZABAD *v.* JAGVAN BAKSHA SINGH. **33 I.C. 461=19 O.C. 49.**

———S. 3 (26)—*Pugmill—Immoveable property.*

Where a pugmill is erected and affixed to the earth it is immoveable property, within S. 3 (25). (*Rigg*, J.) U. THET *v.* TOLA RAM.
43 I.C. 625=11 Bur. L.T. 199.

———S. 3 (34)—*Moveable property—Meaning of.*

The definition of 'moveable property' includes a debt. (*Ayling and Srinivasa Aiyangar*, JJ.) SECRETARY OF STATE *v.* SENGAMMAL.
4 L.W. 613=36 I.C. 833=18 Cr. L.J. 1=(1917) M.W.N. 105.

———S. 3 (39)—*Person—Company—C. P. Code, O. 33, R. 1.*

A company is a 'person' and can sue through its liquidator in *forma pauperis*. (*Bakewell and Kumaraswami Sastri*, JJ.) PERUMAL KAUNDAN *v.* VENKATASAMI NAYUDU.
41 Mad. 624=45 I.C. 165=34 M.L.J. 421.

———S. 3, cl. (57)—*Will — Authority to adopt—Difference between.*

Mere authority to adopt, though revocable and taking effect on the death of a person, cannot be considered a will though the document is styled a will. There must be a disposition of property in addition to the authority to adopt if it is to be treated as a will. A mere direction for management of the property by a manager during minority is not a disposition by a will. (*Wallis*, C.J, *and Seshagiri Aiyar*, J.) JAGANNADHA GAJAPATI *v.* KUNJA BIHARI DEO. **25 M.L.T 204=9 L.W. 385=49 I.C. 929=(1919) M.W.N. 52.**

———S. 3 (59)—*Applicability—Calendar.*

Where the probabilities are not, and the evidence does not show, that the parties usually went by the Gregorian Calendar, provisions of General Clauses Act, S. 3 (59), do not apply. (*Batten*, J.C.) SETH BHOJRAJ *v.* PANDA SHANKARNATH. **1922 Nag. 265.**

———S. 6—*Vested right in procedure—Mortgage decree.*

An application for execution of a mortgage decree made more than 12 years after it was passed is barred under S. 48 though the decree was passed under the old code because no vested right in the procedure prescribed in that Code was acquired by the decree-holder within

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S. 6 of the General Clauses Act. (*Chamier*, C.J. *and Jwala Prasad*, J.) KRISHNA DAYAL GIR *v.* SAKINA BIBI. **20 C.W.N. 952=2 Pat. L.W. 370=34 I.C. 27=1 Pat, L.J. 214.**

———S. 6—*An application to set aside ex parte-decree, whether a right or privilege.*

It is doubtful if an application for setting aside an *ex-parte* decree comes under a right or privilege under S. 6 of the General Clauses Act. In the event of its being deemed to be a right, its acquisition must be under the C.P.C. and not under the Limitation Act. (*Shadi Lal and Rossignol*, JJ.) MANOHARLAL *v.* SADIQA BEGUM. **37 I.C. 292=101 P.R. 1916.**

———S. 6—*Vested right taken away—C.P.C., old and new.*

A vested right under the Old Code which had been replaced by the New Code, is saved by S. 6 if the right had already vested before the coming into force of the New Code, (*Chamier*, J.C. *and Evans*, A.J.C.) JOGESHAR SINGH *v.* BHAGWANBUX SINGH.
9 I.C. 337=14 O.C. 10.

———S. 6—*Change in law due to addition—Scope of.*

S. 6 of the Act applies only to cases where the change in the law is the result of the repeal of an old enactment and does not extend where it is due to an addition to it. 22 C. 767, Foll. (*Fawcett*, A.J.C.) HEMANDAS *v.* CHETTARAM. **13 I.C. 264=5 S.L.R. 184.**

———S. 6, (b)—*Acknowledgment of liability under the Limitation Act* (1859)—*Not a thing done.*

An acknowledgment of liability only extends the peroid of limitation and does not confer title and is not a thing done within S. 6 (b) of the General Clauses Act. ((*Sir John Edge.*) SONI LAL *v.* KANHAIY LAL.
35 All. 227=40 I.A. 74=26 M.L.J. 131=13 M.L.T. 437=17 C.W.N. 605=11 A.L.J. 389=(1913) M.W.N. 470=17 C.L.J. 488=19 I.C. 291=15 Bom. L.R. 489 (P.C.).
[Affirming 32 All. 33=6 M.L.T. 348=3 I.C. 725=6 A.L.J. 931.]

———S. 6 (c)— *Contingent right — Not affected by repeal—C. P.C., O. 21, R. 93.*

Where an execution sale was held under the Old C.P.C. 1882, the auction purchaser had a contingent right to sue for recovery of the purchased money in case the judgment-debtor had no saleable interest. That right is not affected by the new provision of O. 21, R. 93 which negatives a right of suit in such a case. (*Oldfield and Phillips*, JJ.) TIRUMALAI SWAMI NAIDU *v.* SUBRAMANIAN CHETTIAR.
45 I.C. 109=40 Mad. 1009.

———S. 10—*Limitation given in the section.*

S. 10 of the General Clauses Act is applicable to those cases where period of limitation has

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been given in the section and to the condition put in the decree. (*Richards*, C.J. *and Tudball*, J.) HIRDEY NARAIN *v.* ALAM SINGH.
41 All. 47=48 I.C. 353=16 A.L.J. 892.

———S. 10—*Days of grace—Lim. Act, S.* 31.

S. 10 does not apply to the period of grace allowed by S. 31 (1) of the Limitation Act. (*Scott*, C.J. *and Batchelor*, J.) SHEODAS *v.* NARAIN ASAJI. 36 Bom. 268 = 12 I.C. 811=13 Bom. L.R. 1153.

——S. 10—*Limitation—Mode of computation.*

When a certain day is fixed for complying with an order of the Court the party is entitled to have reasonable opportunity of presenting his case or substantiating it in the proper course. (*Teunon and Beachcroft*, JJ.) RAMAPATA CHATTERJEE *v.* SACHINANDAN NANDI.
38 I C 630.

———S. 17 (1)—*District Magistrate—Acting officer.*

It is competent to an Acting Magistrate to grant sanction for the prosecution of an offence wherever the permanent Magistrate could have done so. (*Sadasiva Aiyar and Napier*, JJ.) *In re* KANDASAMI PILLAI. 42 Mad. 69 = 35 M L.J. 736=24 M L T. 505 = 49 I.C. 161=20 Cr L J 129 = (1918) M.W.N. 856.

———S. 21—*Factories Act, Ss.* 28 *and* 29 *—Power to approve—Power to cancel.*

The Inspector of Factories approving a system of working a particular factory can, under S. 21 of the Genl. Clauses Act, cancel the approval. But where, an appeal is pending from the order of cancellation it is not desirable so long as the appeal is pending to institute a criminal prosecution in respect of the factory having been worked in contravention of the order of cancellation. (*Abaul Raoof*, J.) MADAN MOHUN LAL *v.* EMPEROR. 59 I C 857=22 Cr. L.J. 183.

———S. 24 — *Subsequent passing of the Registration Act* (1908) — *Effect—Notification exempting agricultural leases.*

Unregistered agricultural leases for a term not exceeding 5 years, reserving a rent less than Rs. 50, were exempted by a notification of Government of 1885. Subsequently, the Registration Act (1908) was passed, *Held*, the notification was still in force in spite of the New Registration Act under S. 24 of the General Clauses Act. (*Rafique and Piggott*, JJ.) HAJARI SINGH *v.* TARBENI SINGH.
28 I.C. 577=12 A.L.J. 792.

———S. 25—*Rights to reap crops as tenants.*

Mere temporary rights of a tenant-at-will to reap the produce as tenant are not 'immoveable property.' (*Scott-Smith and Abdul Raoof*, JJ.) MOHAMMED ISMAIL *v.* SHAMSUDDIN.
1 Lah 567=2 Lah. L J. 681 = 58 I.C. 321=2 U.P.L.R. (L.) 164.

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———S. 26—*General and special Enactments—Interpretation of statutes.*

Where a special enactment, deals with an offence similar to the offence which is dealt with by a general enactment it does not follow that the provisions of the general enactment of the Penal Code, are repealed to that extent. The prosecution in such a case may lie under either but not both of those enactments as provided by S. 26 of the General Clauses Act. 22 Cal. 131 at 139, Dist. (*Abdur Rahim*, J.) SEGU BALLIAH *v.* RAMASAMIAH.
18 Cr. L J. 992=42 I.C. 608=6 L.W. 283.

——— S. 26—*Separate sentences—Opium Act* (I *of* 1878), *S.* 9 (c) (*f*)—*Bihar and Orissa Excise Act* (II *of* 1915), *S.* 47 (*a*)—*Sale of opium.*

Where a person illegally sold a certain quantity of opium and retained possession of the residue after the sale, separate sentences for possession and sale under the Opium Act and the Bihar and Orissa Excise Act do not contravene S. 26 of the General Clauses Act. (*Roe and Imam*, JJ.) BALI SAHU *v.* EMPEROR.
19 Cr. L J. 446=41 I.C. 974 = 3 P.L J. 438.

———S. 26—*Act constituting two offences.*

When one act constitutes two offences, separate punishment for each offence can be inflicted only if both offences are against the same law. (*Roe and Jwala Prasad* JJ). RAHMATULLA *v.* EMPEROR. 1 P.L J. 373 = 18 Cr. L.J. 321=38 I C 433 = 1 P.L.W. 34

———S. 27—*Bombay High Court Rules, Rule* 107.

Rule 107 of the Bombay High Court Rules falls under S 27 of the General Clauses Act (1897). (*Beaman*, J.) ROOPCHAND RANGILDAS *v.* HAJI HUSSAIN HAJI MAHOMED SUDAGA. 24 I.C. 437=16 Bom. L.R. 204.

GESTATION.

See. (1) T. P. ACT, S 14.
(2) EVIDENCE ACT, S. 112.

GHATTI TOMULU.

See MAD. EST. LAND ACT, SS. 3 (11), 143, 145.

GHATWAL.

———*Jurisdiction—Civil Court—Dismissed by Police authority.*

The dismissal of Ghatwal by the Police authorities cannot be interfered with by Civil Courts. 1 W. R. 321, Foll. (*Fletcher and Richardson*, JJ.) DEBAKAR SINGH *v.* RADHA GOBINDO SINGH. 24 I. C. 527.

———*Rent—Personal property.*

Arrears of rent due during the lifetime of a Ghatwal though collected afterwards are his personal property which can be followed by the creditors in the hands of his representatives. (*Coutts and Adami*, JJ.) BRIJ NATH RAM RAMESHWAR *v.* CHANDKUMARI.
58 I. C. 17=1 Pat. L.T. 642.

GHATWALI.

See LAND TENURE GHATWALI.

GIFT.

(1) DEED—CONSTRUCTION.
(2) HINDU LAW—GIFT.
(3) MAHOMEDAN LAW—GIFT.
(4) T. P. ACT, SS. 122—128.

GODAVERY AGENCY RULES.

See also AGENCY RULES (GODAVERY).

———*Decree passed by Court outside Agency tracts for sale of property within such area—Execution—Legality of decree—Objection to.*

It is not competent to Civil Courts exercising jurisdiction outside the Agency area to pass a decree for the sale of properties situate within the area. When such a decree is sought to be executed within the Agency area, the Agency Court has a right to refuse execution on the ground that the decree is, on its face without jurisdiction and a nullity. 43 M. 813 Foll. 43 M. 675, Dist. (*Krishnan and Venkatasubba Row*, JJ.) KRUTHIVENTI PERRAZU *v.* SRI RAJAH NALLAPARAZU MEERJA SEETHARAMA CHANDRA. **16 L W. 669 = (1922) M W.N. 728 = 1923 M 114 (1).**

———R. 3 (2) and (3)—*Cancellation of pleader's sanad—Suit by pleader, does not lie.*

Where the Government Agent of Godavery Agency cancelled the *sanad* of a pleader in the Agency tract for misconduct, *held*, that the Agent acted as a Court and that no suit by the pleader would lie against the Agent for what he did as a Court. (*Spencer and Ramesam*, JJ.) MALLADI VENKATARAMAYYA *v.* SECRETARY OF STATE.

(1921) M.W.N. 830 = 30 M.L.T. 76 = 15 L.W. 236 = 65 I.C. 345 = 42 M.L.J. 148.

GOOD FAITH.

See (1) SP. REL. ACT, S. 27.
(2) T.P. ACT, SS. 41, 43, 53.
(3) TRUSTS ACT, S. 96.

GOODS.

See CONTRACT ACT, SS. 76—123.

GOOD WILL.

See (1) CONTRACT ACT, SS. 253—266.
(2) PARTNERSHIP.
(3) TRADE MARK.
(4) TRADE NAME.

GOVERNMENT.

See (1) ACT OF STATE.
(2) CROWN.
(3) GOVERNMENT OF INDIA ACT.
(4) GRANT.
(5) SECRETARY OF STATE.

GOVERNMENT OF INDIA ACT (1915).

———S. 28—*Security given by the Secretary of State for appellant—Engagement for the purpose of the Government of India.*

(Per *Mookerjee*, J., *Teunon*, J., Contra).—The concurrence of a majority of votes is necessary for the validity of a security given by the Secretary of State for an appellant. A covenant by the Secretary of State by which the performance of a decree by a private party is guaranteed is not an engagement within Ss. 2 and 40 of the Act, 1858. (*Mookerjee* and *Tunon*, JJ.)

38 Cal. 734 = 13 C.L.J. 365 = 9 I.C. 852 = 15 C.W.N. 475.

GOVERNMENT OF INDIA ACT (1915), S. 65.

——— Ss. 32 and 65 (2)—Ultra vires—*Legislation.*

If the Indian Legislative Council passes an enactment depriving a subject of his remedy in Civil Courts against Secretary of State for wrongs to property the act is *ultra vires.* (*Lord Macnaghten*) SECRETARY OF STATE *v.* MOMENT.

40 Cal. 391 = 40 I A. 48 = 13 M L T. 55 = 17 C.W.N. 169 = (1913) M.W.N. 45 = 15 Bom. L.R. 27 = 11 A.L.J. 49 = 17 C.L.J. 194 = Bur. L.T. 1 = 24 M.L.J. 459 = 18 I.C. 22 (P.C.) = 7 L.B.R. 10.

[On appeal from 8 I.C. 1129 = 5 L.B.R. 163 and 8 I.C. 1189 = 3 Bur. L. T. 93.]

———S. 32—*Secretary of State—Liability to be sued.*

An enactment adding to or taking away from, the liability of the Secretary of State in Council to be sued, as settled by the Government of India Act is *ultra vires* of the Indian Legislature. (*Wallis*, J.) A. M. ROSS *v.* SECRETARY OF STATE.

37 Mad. 55 = 24 M.L.J. 429 = 19 I.C. 353 = (1913) M.W.N. 758.

———S. 32 (3)—*Liabilities lawfully incurred—Meaning of.*

Liabilities lawfully incurred do not mean liabilities incurred by acts authorised by law but must mean liabilities incurred by servants or agents in course of undertakings in which the Government servants are lawfully engaged. (*Crouch and Hayward*, A J.Cs.) MATHARADAS *v.* SECRETARY OF STATE FOR INDIA.

11 I.C. 58 = 6 S.L.R. 82.

———S. 60—*Local Governments Jurisdiction, alteration in—Effect on Civil Court's jurisdiction.*

A Government notification, declaring the deep stream of the Ganges as boundary of the two provinces also determines the jurisdiction of the Civil Courts in those places. Alteration in the jurisdiction of the Local Government does not affect the Civil Courts' jurisdiction. (*Coutts and Ahmed*, JJ.) KESHO PRASAD SINGH *v.* NIRMAL KUMAR.

1 Pat. L T. 288 = 5 Pat. L.J. 451 = 57 I C. 201 = 2 U.P.L.R. (P.) 152.

———S. 65—*Indian Legislature—Powers of—Suit against Secretary of State—Deprivation of remedy of subject*—Ultra vires—*Burma Act* (IV *of* 1898), *S.* 41 (*b*)—*Indian Councils Act*, 1861, *S.* 22 *proviso.*

S. 41 (*b*) of Act IV of 1898 (Burma) which enacts that no Civil Court is to have jurisdic-

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tion to determine a claim to any right over land against the Government, is *ultra vires* of the Indian Legislature as it contravenes S. 65 of the Government of India Act, 1858 (21 and 22 Vic., C. 106), which preserves to the subject the same remedy against the Government as there would have been against the E I. Co. An action for damages for trespass on land would have lain against the East India Co. and consequently would lie also against the Secretary of State. 5 B H.C.R. Ap. I, approved. *Obiter.*—The Indian Government might legislate validly about the formalities of procedure so long as they preserve the substantial right of the subject to sue the Government in Civil Courts like any other defendant and do not violate the fundamental principle that the Secretary of State even as representing the Crown is not to be in a position different from that of the East India Co. (*Lord Macnaghten*). SECRETARY OF STATE *v.* MOMENT.

40 Cal. 391 = 40 I.A. 48 = 13 M L.T. 58 = 17 C.W.N. 169 = (1913) M.W N. 45 = 15 Bom. L.R. 27 = 11 A L J. 49 = 17 C.L.J. 194 = 6 Bur. L.T. 1— 24 M.L J. 459 = 18 I.C. 22 = 7 L.B.R. 10 (P.C.)

[On appeal from 8 I.C. 1129 = 5 L.B.R. 163 and 8 I.C. 1189 = 3 Bur. L.T. 93.]

———**S. 65**—*Right of action against E. I. Company not taken away by Indian Legislature.*

If a party had a right of action against the East India Company, it cannot be taken away by any Act of Indian Legislature after the company's possessions were vested in the Crown. 40 Cal. 391 (P.C.), Foll. (*Macleod, C.J. and Shah, J.*) DAMODAR TUKARAM *v.* SECRETARY OF STATE FOR INDIA.

45 Bom. 1161 = 62 I.C. 673 = 23 Bom. L.R. 492.

——— **S. 65**—*Power of legislature.*

Powers of legislature discussed. (*Ayling and Sadasiva Aiyar, JJ.*) *In re* RANGADU,

22 M L.T. 211 = 6 L.W. 428 = 42 I.C. 724 = 18 Cr. L J. 996 = (1917) M.W.N. 682.

———**Ss. 65 (2), (3) and 72**—*Legislative power of the Government of India—Limits of.*

Section 65 (2) of the Act does not prevent the Government of India from passing a law which may modify or affect a rule of the constitution or of the common law upon the observance of which some person may conceive or allege his allegiance to depend. It only refers to laws which directly affect the allegiance of the subject. (*Viscount Cave.*) BUGGA *v.* EMPEROR. **1 Lah. 326 = 47 I.A 128 = 39 M.L J. 1 = 18 A.L.J. 438 = 24 C.W N. 650 = 21 Cr. L J. 456 = (1920) M.W N. 323 = 2 U.P L.R. (P.C.) 50 = 56 I.C. 440 = 22 Bom. L.R. 603 = 12 L.W. 296 (P.C.).**

———**S. 65** (2)—*'Unwritten laws'—What are.*

GOVERNMENT OF INDIA ACT (1915), S. 101.

Rights to personal freedom and property are the rights referred to in the phrase 'unwritten laws' in S. 65 (2) of Government of India Act. 6 B.L R. 392, approved; 40 C. 391 P.C., ref. (*Abdur Rahim, O.C.J., Ayling and Seshagiri Aiyar, JJ.*) ANNIE BESANT *v.* GOVERNMENT OF MADRAS. **39 Mad. 1085 = 5 L W. 1 = (1916) 2 M W.N. 385 = 18 Cr. L J. 157 = 37 I C 525 = 21 M.L.T. 124.**

———**S. 79**—*Ordinances.*

The ordinances by the Governor-General are deemed to be made by him in Council and remain in force for six months after termination of war. (*Macleod, J.*) WILFRED R. PADGETT *v.* JAMSETJI. **41 Bom. 390 = 33 I.C. 724 = 18 Bom. L,R. 190.**

———**S. 79**—*Calcutta Improvements Act, Ss. 42 and 69—Acquisition and taxation—Distinction between — Distinction between acquisition for recoupment and taxation for purpose of recoupment.*

When a proposed acquisition is abandoned on condition of periodical payments by the owner of a sum fixed in perpetuity or the payment in lump of the capitalised value thereof, a tax is in essence imposed on the land; such a tax can be validly imposed only with the sanction of the proper authorities duly obtained under S. 43, and the statute imposing the burden must do so in clear and unambiguous language. (*Mookerjee and Cuming, JJ.*) TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA *v.* CHANDRA KANTA GHOSH.

44 Cal. 219 = 21 C.W.N. 8 = 36 I.C. 749 = 24 C.L J. 245.

———**S. 101, proviso**—*Additional Judges—Appointments for periods not exceeding two years.*

The proviso to S. 101 of the Government of India Act does not mean that as regards each High Court, appointment of temporary judges can only be made for periods not exceeding two years in all. The proviso must be read as meaning that appointments may be made from time to time for such period, not exceeding two years, as may be required from time to time on each occasion when the power is exercised. (*Wallis, C J. and Kumaraswamy Sastri, J.*) KANDASWAMI PILLAI *v.* MUTHUVENKATACHALA MANIAGAR. **43 I.C 850 = 33 M L.J. 787.**

——— **S. 101 (d)**—*High Court—Constitution of.*

The usual strengh of a High Court consisted of a Chief Justice and six puisne Judges. Owing to the retirement of one of them, the Court consisted of an Acting Chief Justice and five puisne Judges, of whom two were barristers and two were members of the Civil Service. *Held*, that the constitution of the High Court was in accordance with S. 101 (d) of the Government of India Act. 9 All. 625 (F.B.), Foll. (*Knox, J.*) TEJPAL *v.* JHAGRU.

51 I C. 63 = 1 U P.L.R. (H C.) 39.

GOVERNMENT OF INDIA ACT (1915), S. 106.

———S. 106, (2)—*Power of High Court to compel Revenue authority to do itsduty.*

The order of a High Court to a revenue officer to do his statutory duty would not be the exercise of "original jurisdiction in any matter concerning the revenue" within the meaning of S. 106, Govt. of India Act. (*Lord Phillimore*). ALCOCK ASHDOWN AND CO., LTD. *v.* THE CHIEF REVENUE AUTHORITY OF BOMBAY. **47 Bom. 742=45 M.L.J. 592=38 M.L.T. (P.C.) 267=L.R. 4 (P.C.) 188=18 L.W. 918=25 Bom. L.R. 920=21 A.L.J. 689=(1923) M.W.N. 557=50 I.A. 227=1923 P.C. 138 (P.C.).**

———S. 106 (2)—*Application under Specific Relief Act, S. 45, if lies—Income Tax Act, S. 51.*

S. 106 (2) of the Govt. of India Act and S. 52 of the Income Tax Act prohibit the High Court from entertaining any application under S. 45 of the Specific Relief Act for compelling the Revenue Board to refer the matter to the High Court under S. 51 of the Income Tax Act. Issuing an order under S. 45 of the Specific Relief Act is an exercise of original jurisdiction under S. 106 (2) of the Government of India Act. (*Wallis*, C.J. *and Oldfield*, J.) THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* THE NORTH ANANTAPORE GOLD MINES, LTD. **44 Mad. 718=41 M.L.J. 177=(1921) M.W.N. 502=64 I.C. 681=14 L.W. 108.**

———S. 106 (2)—*Suit for declaration that agreement for compensation for income-tax is binding on Collector—Original Side—Trial on the merits.*

A suit for declaration that an agreement for composition of income-tax entered into between the plaintiffs and the Collector of Madras was in force and that the latter was not entitled to reassess the plaintiffs in repudiation of the agreement, is not cognizable by the High Court in its original jurisdiction. (*Coutts-Trotter*, J.) MESSRS. BEST & CO., LTD. *v.* THE COLLECTOR OF MADRAS. **48 I.C. 790=35 M.L.J. 23.**

———S. 107—*Grounds for interference.*

Though the powers conferred on the High Court under S. 107 of the Govt. of India Act are extensive enough to authorise the Court, in the exercise of its discretion, to send for the record of such a proceeding in a Subordinate Court, namely, the record of an enquiry conducted by a District Judge with a view to drawing up a list of persons proved to be touts, and to examine such record and thereafter issue such orders or instructions to the District Judge as might appear to be proper, the High Court would not interfere in the exercise of its powers of superintendence, where the sole ground upon which interference was asked for was that the decision of the District Judge was against the weight of the evidence. (*Mears*, C.J. *and Piggott*, J.) KASHI NATH *v.* EMPEROR. **48 A. 676=L.R. 4 A. 317=21 A.L.J. 671=9 O. & A.L.R. 696=1924 A. 69.**

GOVERNMENT OF INDIA ACT (1915), S. 107.

———S. 107—*Munsiff committing party for contempt—Interference in revision.*

The High Court has jurisdiction to interfere in revision with an order of a Munsiff punishing a party for contempt. If on an application for restoration of a case being dismissed for default, the plaintiff states that 'the order was against rules and law' no contempt of Court is meant. (*Walsh*, J.) KADHORY *v.* EMPEROR, **42 All. 26=52 I.C. 279=20 Cr. L.J. 618=17 A.L.J. 898.**

———S. 107—*Proceedings under Chap. XII, Cr. P. Code—Power of General Superintendence.*

Proceedings under Chap. XII of the Cr. P. Code are not proceedings which could be called up by S. 435 of the Code and under S. 107 of Government of India Act, the High Court has no general powers of superintendence over the inferior Courts in respect of proceedings taken under Chap. XII of the Cr. P. Code. 19 Cal. 127 and 16 A.L.J. 189, Ref. (*Knox*, J.) SAKHAWAT ALI *v.* EMPEROR. **41 All. 302=51 I.C. 337=20 Cr. L.J. 449=17 A.L.J. 321.**

———S. 107—*Cr. P. Code, S. 145—Proceedings under—Interference.*

S. 107 of the Government of India Act cannot be invoked so as to question proceedings which purport to be proceedings lawfully taken by a Magistrate under Chap. XII of the Cr. P. Code. If proceedings totally without legal foundation or legislative authority are taken by a Magistrate under colour of Chapter XII but not seriouly purporting to be taken under or to comply with the provisions of that chapter, there is a clear case for interference. (*Walsh*, J.) SUNDER NATH *v.* EMPEROR. **40 All. 364=44 I.C. 673=19 Cr. L.J. 369=16 A.L.J. 189.**

———S. 107—*Scope of—Cr. P. Code, S. 145.*

There is extension of the jurisdiction of the High Court under S. 107 of the Government of India Act in the matter of the right of superintendence over the proceedings of the subordinate Courts beyond that under S. 15 of Charter Act. (*Knox*, A.J.C.) MATUKDHARI SINGH *v.* JAISARI. **39 All. 612=41 I.C. 652=15 Cr. L.J. 828=15 A.L.J. 576.**

———S. 107—*Rent Controller—Superintendence—Powers of—Calcutta Rent Act III of 1920.*

The Court of the Rent Controller appointed under the Calcutta Rent Act is a Court of civil jurisdiction subject to the powers of superintendence conferred by the High Court under S. 107 of the Govt. of India Act and the High Court can interfere in revision with its decision. (*Woodroffe and Ghose*, JJ.) ABDUL HUQ *v.* MAHOMED DIN. **1923 Cal. 311.**

GOVERNMENT OF INDIA ACT (1915), S. 107.

———S. 107—*Proceedings under S. 145 of the Criminal Procedure Code—Abuse of the process of Court—Revision—Interference.*

Where proceedings are taken under S. 145 of the Code of Criminal Procedure which amount to an abuse of the process of Court and the object of which is to harass or annoy a successful party in prior possession proceedings, the High Court will interfere under S. 107 of the Govt. of India Act. (*Ghose and Chotzner*, JJ.) ARAN SARDAR *v.* HARA SUNDAR MAJUMDAR. 27 C.W.N 171= 37 C.L J. 39=24 Cr. L J 97= 1923 Cal. 95.

———S. 107—*Powers of superintendence of High Court—Order refusing sanction.*

Although the High Court is vested with very wide powers of superintendence over the proceedings of subordinate Courts, these powers are not to be exercised for the purpose of interfering with the order of a subordinate Court merely on the ground of error in law or error in fact. In other words the powers of superintendence are not applicable where the only question is whether the decision of the lower Court is against the weight of evidence. (*Ghose and Cuming*, JJ.) SARAT CHANDRA MANDAL *v.* RAMSAHI ROY. 26 C.W.N. 1016=36 C.L.J. 265= 23 Cr. L.J 635=1923 Cal. 45.

———S. 107—*Order of Rent Controller—Superintendence.*

The High Court has the power of revising the Rent-Controller's orders under its general powers of Superintendence under S. 107 of the Government of India Act. (*Chatterjee and Cuming*, JJ.) CHATTERJEE *v.* TRIBEDI. 26 C.W.N. 78=49 Cal. 523=1922 Cal. 427.

———S. 107—*Subordinate Court—Rent Controller—Order of, open to revision by High Court.*

Order of Rent Controller rejecting application to fix standard rent is open to revision by High Court when the rooms let are certain and easily ascertainable. (*Rankin*, J.) ALLEN BROS. AND CO. *v.* BANDO AND CO. 26 C.W N. 845.

———S. 107—*Order without jurisdiction under Cr. P. Code, S. 145—Interference.*

The High Court can under S. 107 set aside the proceedings instituted without jurisdiction by a Subordinate Court under S. 145 of the Cr. P. Code notwithstanding S 435 (3) of the Cr. P. Code and can make consequential or incidental orders under the same section. Thus it can give direction for disposal of property attached and dealt with by the Subordinate Courts. (*Mookerjee*, A.C.J. *Fletcher*, N. R. *Chatterjee*, *Richardson and Ghose*, JJ.) ALI MAHOMED MANDOL *v* PIGGOTT. 60 I C. 325=32 C.L.J. 270 (S B.).

———S. 107—*Order under S. 145, Cr. P. Code—Revision—Difference of opinion—Senior Judge.*

GOVERNMENT OF INDIA ACT (1915), S. 107.

On a difference of opinion in matters under S. 145, Cr. P. Code, the Senior Judge's opinion prevails as the jurisdiction exercised by the High Court is under S. 107 of the Government of India Act and not under Ss. 435 and 439, Cr. P. Code. (*Chaudhuri and Newbould*, JJ.) THE INDIAN IRON AND STEEL COMPANY *v.* BANSO GOPAL TEWARI. 22 Cr. L.J. 99= 59 I.C. 403=32 C L.J. 54.

———S. 107—*Powers of superintendence—Extent of—Difference of opinion.*

On a difference of opinion among two Judges exercising revisional powers, the decision of the Senior Judge prevails on the principle of cl. 36 of the Letters Patent (Cal.). *Per Huda*, *J.*—The High Court's power of superintendence over inferior Courts is not confined to questions of jurisdiction alone but also applies where the inferior Courts commit an illegality or material irregularity. (*Newbould and Huda*, JJ.) MOIRAM BEWAH *v.* MRIJAN SARDAR. 31 C.L J. 183= 54 I.C. 169=21 Cr. L.J. 25=24 C.W.N. 97.

———S. 107—*Common manager under S. 100 of the B.T. Act—District Judge's orders—Revision.*

The High Court having made rules under S. 100 of the B.T. Act defining the powers and duties of common managers, it has power under S. 15 of the Charter Act to superintend and revise the orders of a District Judge under Chap. IX of the B.T Act. 40 C. 150, Ref. (*Holmwood and Walmsley*, JJ.) SATYENDRA MOHAN GHOSE *v.* RAJ MOHAN GUHA. 29 I.C. 177.

———S. 107—*Interlocutory order—Revision.*

A High Court can interfere under S. 15 of the Charter Act (S. 107 of the Government of India Act) with interlocutory orders when they might lead to failure of justice or irreparable injury. (*D. Chatterjee and Chapman*, JJ.) SIVAPROSAD RAM *v.* TRICOMDAS 27 I.C. 917=42 Cal. 926.

———S. 107—*Order under S. 475, Cr. P.C.—Revision.*

A criminal bench of the High Court cannot revise an action taken by a Civil or Revenue Court under S. 476, Cr. P.C. unless authorised by the Chief Justice, (*Jenkins*, C.J. *Harrington Stephen*, *Mookerjee and Holmwood*, JJ.) HAR PRASAD DAS *v.* EMPEROR. 40 Cal. 417= 17 C L.J. 213=14 Cr. L J. 197= 19 I.C. 157=17 C.W.N. 647 (F B.).

———S 107—*Court-fee — Decision on — Revision.*

An erroneous decision of the Court below that the suit falls within S. 7 (xi) (c) is not final under S. 12 of the Act, and the High Court is competent to interfere with it under S. 15 of the Charter Act. (*Mookerjee and Beachcroft*, JJ.) SUNDAR MAL MARWARI *v.* MURRAY. 16 I.C. 963=16 C.L.J. 375.

GOVERNMENT OF INDIA ACT (1915), S. 107.

——— S. 107—*Power of High Court to transfer case from Agency Court —Vizagapatam Agency Rules, R. 14.*

Under S. 107 of the Government of India Act the High Court has power to transfer a case from the Court of an Agency Commissioner to an equal or superior court. The Court of the Agency Commissioner is subject to the Appellate jurisdiction of the High Court. The District Court is not a Court equal or superior to that of an Agency Commissioner and the transfer of a case from his file must be to the High Court. (*Oldfield and Venkatasubba Rao*, JJ.) MAHARAJAH OF JEYPORE *v.* GANGA RAJU.

46 Mad. 726=45 M.L.J. 8=17 L.W. 517=(1923) M.W.N. 277=32 M.L.T. (H.C.) 269=1923 Mad. 604.

——— S. 107—*Stay of criminal proceeding—Pending civil suit—Power of High Court.*

The High Court is under S. 107 of the Government of India Act invested with powers of superintendence over all subordinate courts in the Presidency and this power includes a power to stay criminal proceedings in a Magistrate's Court till the decision of a Civil suit between the parties. Where however the decision of the Civil suit would not conclusively determine the question of possession of the property which was the only material point for the decision of the Criminal Court, the High Court refused to stay the trial of the Criminal Proceedings. (*Spencer*, J.) NAMBIA PILLAI *v.* SUDALAI MUTHU NADAN. **17 L.W. 570=(1923) M.W.N. 276=44 M.L.J. 642=32 M.L.T. (H.C.) 191=1923 Mad. 595.**

——— S. 107—*Land Acquisition Proceedings—Collector—Order of—Revision.*

Proceedings under Part III of the Land Acquisition Act are judicial and an order of the Collector refusing to make a reference on the application under S. 18 of the Act is open to revision under S. 115, C.P.C. or S. 107 Government of India Act. 12 C.W.N. 241, Foll. 36 I.C. 621 Diss. (*Ayling and Krishnan*, JJ.) PARAMESWARA AIYAR *v.* LAND ACQUISITION COLLECTOR, PALGHAT.

42 Mad. 231=49 I.C. 639=36 M.L.J. 95.

——— S. 107—*Irrelevant and scandalous matter in judgment of Subordinate Court—Power to expunge—Application by third party.*

Per Abdur Rahim, J. (*Oldfield*, J. *dissenting*).—The powers of superintendence of the High Court are of an extremely wide character and include the power to expunge such matters from judgment so that they may not be circulated and published to the prejudice of persons who are not concerned in the suit either as a party or as a witness. The High Court will only interfere in exceptional cases and with great caution in the exercise of such jurisdiction. *Per Oldfield*, J.—The High Court has no power under S. 107 of the Government of India Act to order the expunging of portions of the judgment of a Subordinate Court at the instance of a person who is not a party to a suit. The expression 'superintendence in S. 107 does not include the relief abovementioned. (*Abdur Rahim and Oldfield*, JJ). *In re* V. KRISHNASWAMI AIYANGAR. **47 I.C. 981=35 M.L.J. 363.**

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——— S. 107—*Village Court—Order of Munsiff—Revision.*

An order passed by a District Munsiff under S. 73 of the Madras Village Courts Act can be revised by the High Court. (*Sadasiva Aiyar and Moore*, JJ.) PARAMASIVAM PILLAI *v.* PERIYANAYAGATH AMMAL. **34 I.C. 503.**

——— S. 107—*Pending Criminal Proceedings—Revision.*

If the ends of justice so require, the High Court will interfere in revision in a pending proceeding. (*Kumaraswamy Sastri*, J.) *In re* KUPPUSAMI AIYAR. **39 Mad. 561=16 Cr.L.J. 477=28 M.L.J. 505=2 L.W. 463=17 M.L.T. 398=29 I.C. 109=(1915) M.W.N. 363.**

——— S. 107—*Dismissal of complaint—Crim. P. Code, S. 203—Revision.*

Where a complaint is dismissed under S. 203 without reasons, the High Court can set aside the order and direct enquiry. *Quaere*—Whether S. 439, Cr. P. C., would also empower the High Court to act in revision? (*Oldfield*, J.) GANGA REDDI *v.* SAMARAPATHY MUDALI. **38 Mad. 512=21 I.C. 681=25 M.L.J. 510=14 Cr.L.J. 633.**

——— S. 107—*Power of High Court to interfere with order passed according to section 144, Criminal Procedure Code—Revision.*

S. 107 empowers the High Court to prevent the evasion by the Magistrate of the Law laid down in S. 144, Cr. P. C., by issuing a permanent injunction under the guise of successive renewal of temporary orders, under the section. 7 C.W.N. 140; 11 C.W.N. 79; 5 C. 7: 25 C. 852 Ref. (*Miller and Sadasiva Aiyar*, JJ.) GOVINDA CHETTY *v.* PERUMAL CHETTY. **21 I.C. 381=14 Cr.L.J. 589=25 M.L.J. 370.**

——— S. 107—*Criminal case—Proceedings under S. 145—Interference.*

It is not the practice of the High Court to interfere under S. 15 of the Charter Act except where a Magistrate's order under S. 145, Cr. P. C., is without jurisdiction. 31 M. 318; 14 C. 361; 26 C. 188; 25 A. 537; 24 B. 527 Ref. (*Ayling and Napier*, JJ.) KAMAL KUTTY *v.* UDAYAVARAMA RAJA. **13 Cr.L.J. 753=17 I.C. 65=36 Mad. 275=12 M.L.T. 439=23 M.L.J. 499=(1912) M.W.N. 1154.**

——— S. 107—*Order purported to be passed under S. 144, Cr.P.C.—Absolute want of jurisdiction—Powers of interference.*

Although under cl. (4) of S. 144, Cr. P.C., it is incumbent on the petitioners to go in the first instance before the District Magistrate before coming up in revision to the High Court and ordinarily that is the practice in the High Court still the High Court will interfere where

the order of the sub-divisional Magistrate is wholly without jurisdiction. 1922 P. 435 F.B. Foll. (*Kulwant Sahay*, J.) AKAL WAHTON *v.* MAHABIR MAHTON. **1 Pat. L.R. 223 (Cr.)= 1924 P. 145.**

——S. 107—*Rateable distribution—Order defective—Interference.*

Where an order under S. 73, C.P.C., is hopelessly inadequate and does not refer to the claims of parties, arguments advanced and reasons for the conclusions arrived at, the High Court can interfere under S. 107, Government of India Act. (*Mullick and Bucknil*, JJ.) BABU BISHUN MOHAN SAHAY *v.* NARAYAN PRASAD ASTHANA. **74 I.C. 140.**

——S. 107 — *Power to expunge remarks from judgment of inferior Criminal Court—Executive order.*

S. 107 of the Government of India Act, empowers the High Court to delete irrelevant remarks from the judgments of inferior Criminal Courts. 15 C.W.N. 593 ; 16 C.W.N. 1105 ; 17 C.W.N. 238, Ref. (*Jwala Prasad*, J.) BIRNARAYAN SINGH *v.* EMPEROR. **23 Cr. L.J. 371=3 Pat. L.T. 239=1922 P. 97.**

——S. 107—*Interlocutory order.*

Direction for taking accounts in a pending suit will not be interfered with in revision unless irreparable injury will otherwise result. (*Miller*, C.J. *and Mullick*, J.) RAI BAHADUR HARIHAR PRASAD SINGH *v.* MAHARAJAH KESHO PRASAD SINGH. **3 Pat. L.T. 638.**

——S. 107—*High Court — Powers of superintendence—Effect of.*

It is the privilege and prerogative of the High Court, when once a record is brought before it which is so erroneously and manifestly unjust to exercise its powers of superintendence to revise such order or to set it aside and direct such further proceedings to be taken as justice may require, but where no record is before it, but the High Court feels its necessity, it can at the instance of a party, send for it, by powers conferred on it by S. 107. (*Atkinson and Adami*, JJ.) BRINDABAN CHANDER CHOUBE *v.* GOUR CHANDRA RAI. **1 Pat. L.T. 467= 56 I.C. 155=(1920) Pat 53.**

——S. 107—*Dismissal of suit—Unjustifiable.*

Where a Court dismisses a suit on plaintiff's failure to amend the plaint without giving him an opportunity to continue the trial with the plaint as it was, it refuses to exercise a jurisdiction and its order is open to revision. (*Mullick and Jwala Prasad*, JJ.) NAURANG RAM SAHU *v.* BHAKHORI MANDAR. **51 I.C. 189=4 P.L.J. 277.**

——S. 107 — *Jurisdiction — Failure to exercise—Revision.*

An order returning a plaint is open to revision in cases where there is no appeal. (*Atkinson and Manuk*, JJ.) CHANDRAMANI KOER *v.* BASUDEO NARAIN SINGH. **49 I.C. 442= 4 P.L.J 57.**

——S. 107—*Denial of fair trial—Interference.*

Where there has been a denial of a fair trial to the applicant the High Court has power to set aside the decision of the Lower Court. (*Miller*, C.J. *and Mullick*, J.) NILMANI NATH SAHI DEO *v.* PRATAP USAI NATH SAH DEO. **4 Pat. L.J. 371=49 I.C. 389= (1919) Pat. 60.**

——S. 107—*Addition of parties—Interference.*

It is open to the High Court to interfere in a proper case with an order of refusal by the lower Court to add a person as party defendant in a pending suit. (*Mullick and Thornhill*, JJ.) ABDUL HAQUE *v.* MUHAMMAD YAHA KHAN. **47 I.C. 725.**

——S. 107—*Leave to sue receiver—Refusal of.*

A High Court is entitled to exercise of its power of its superintendence under S. 107 of the Government of India Act to correct and supervise Subordinate Courts whenever they appear to have wrongly exercised their inherent powers. An order of the lower Court refusing leave to sue a receiver without reasons is liable to be set aside. (*Mullick and Thornhill*, JJ.) BRAJA BUSAN *v.* SRIS CHANDRA TEWARY. **4 P.L.J. 20=47 I.C. 719= (1918) Pat. 337.**

——S. 107—*Criminal case—Revision—Rehearing—Power to direct.*

Under S. 107 of the Act, the High Court has power to direct a Sessions Judge to rehear an appeal after obtaining additional evidence. (*Mullick and Thornhill*, JJ.) ZAMIRUDDIN *v.* EMPEROR. **47 I.C. 274=19 Cr. L.J. 902= 3 P.L.J. 632.**

——S. 107—*Small Cause Court—Leave to withdraw—Interference.*

Where a suit has been allowed to be withdrawn by a Small Cause Court and no reasons have been recorded for permitting such withdrawal, the High Court will set aside the order in the exercise of its powers under S. 107 of the Government of India Act, 1915. (*Chamier*, C.J. *and Sharfuddin*, J.) LUCHI RAI *v.* RAGHUBIR DUBE. **43 I.C. 435=2 P.L.J. 682.**

——S. 107—*High Court's jurisdiction under.*

Obiter :—Administrative as well as judicial acts of Subordinate Courts are subject to the High Court's jurisdiction to interfere under S. 107 of the Act. (*Chamier*, C.J., *Sharfuddin and Atkinson*, JJ.) RAGHUNATH SINGH *v.* HAZARI SAHU. **1 P.L.W. 111= 2 P.L.J. 180=37 I.C. 872= (1917) Pat. 105.**

GOVERNMENT OF INDIA ACT (1915), S. 107.

———S 107—*Legal Practitioners Act, S. 14.*

Where proceedings were instituted under the Legal Practitioners Act before the District Munsif and an application was made to transfer the same to another Court. *Held*, that the procedure under the Legal Practitioners Act is neither criminal nor civil, but purely designed for the purposes of discipline. Such disciplinary proceedings under S. 14 are not proceedings of a Court of civil jurisdiction and S. 141, C.P.C., cannot apply to them. The enquiry under S. 14 of the Legal Practitioners Act, cannot be delegated to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed. Applicability of S. 107 of the Government of India Act, 1915, to proceedings under S. 14 of the Legal Practitioners Act, discussed. (*Mullick and Atkinson, JJ.*) *In the matter of* JANAK KISHORE. **1 P.L.J 576 = 18 Cr.L.J. 132 = 37 I.C. 484 = (1917) Pat 60.**

———S. 107—*High Court's exercise of power under Charter Act.*

The exercise of power by High Court under the Charter Act is justifiable only in case of irreparable injury otherwise resulting to the parties by a judge exceeding or refusing to exercise, or only pretending to exercise, jurisdiction vested in him by law. (*Sharfuddin and Roe. JJ.*) GANGA PRASAD *v* NANDU RAM. **20 C.W N. 1080—1 P.L.J 465 = 37 I.C. 129 = 3 P.L.W. 53.**

———S. 107 (2)—*Superintendence—Limits of.*

The word 'superintendence' in S. 107 (2) of the Government of India Act should be construed very narrowly and does not justify the interference of the High Court so as to evade the provisions of S. 115 of the C.P. Code and to result in entertaining an appeal or revision where no such right is given by statute. (*Sanderson, C.J., Teunon and Walmsley, JJ.*) KUMAR CHANDRA KISHORE *v.* BASAT ALI. **27 C.L.J 418 = 44 I.C. 763 = 22 C.W.N. 627.**

———S. 108—*Division Court—Meaning of.*

Under S. 108 a Division Court must consist of at least two judges. (*Coutts, J.*) RAGHUBAR SINGH *v.* JETHU MAHTON. **1 P. 384 = 3 P. L.T. 194 = (1922) Pat 88 = 1922 P. 13.**

GOVT. OF INDIA ORDINANCE (II OF 1918).

———S. 2 (2) and (9)—*Serving under war conditions—Meaning of—Court.*

Serving under war conditions does not necessarily mean serving abroad. All possible indulgence ought to be extended, if it is true that the plaintiff served in France. (*Pelman, J.*) GURBACHAN SINGH *v.* RALLA RAM. **53 I.C. 947 = 2 Lah L.J. 37.**

GRAMANATHAM.

See (1) GRANT—INAM.
(2) LAND TENURE—MIRASI.

GRANT—Construction.

GRANT.

BRAHMOTTER.
CONSTRUCTION.
DHARKHAST.
FERRY.
FISHERY.
IMPLIED GRANT.
INAM.
JAGIR.
LIFE ESTATE.
MAINTENANCE GRANT.
MINERALS.
PALAYOM.
RESUMPTION.
RIGHTS OF GRANTEE.
RIGHTS OF HOLDER.
RYOTWARI PATTA.
SANKALP.
SARANJAM.
SERVICE GRANT.
WASTE LAND.

Brahmotter.

———*Brahmotters—Incidents of.*

Brahmotter lands are lands granted rent free or at a fixed rent to Brahmins for their support and that of their decendants, as a reward for sanctity of living or to enable them to devote themselves to religious duties and education. *Semble* :—The Permanent Settlement of 1793 expressly confirming mineral rights to Zemindars would suggest that up to that date they had no mineral rights and could not therefore grant such rights. (*Lord Buckmaster*). SASHI BHUSHUN *v.* JYOTI PRASAD SINGH DEO. **44 Cal. 585 = 21 C.W N. 377 = 15 A.L.J. 209 = 32 M.L.J. 245 = (1917) M.W.N. 223 = 25 C.L.J. 263 = 21 M L T 303 = 19 Bom. L R. 416 = 6 L.W. 2 = 44 I.A 46 = 40 I.C. 139 = 1 P.L W. 361 (P.C.), [On appeal from 38 Cal. 845 = 16 C.W.N. 241 = 12 I.C. 482 = 14 C-L.J. 361.]**

———*Brahmotter, Incidents of.*

A Brahmotter holding may be a tenure or *raiyati* holding. There is no presumption that it is a tenure. What it is, depends entirely on the intention of the grantor. (*Sultan Ahmad, J.*) CHANDRA KISHORE JOSHI *v.* SUDAMA RAI. **67 I.C. 756.**

Construction.

———*Construction—Birt Bankati.*

In the Province of Oudh large proprietors let out lands on favourable terms on security of tenure, these grants of land are called Birt Bankati and various kinds of birts exist, the incidents of each of which differ from those of others. (*Amir Ali.*) RAJA MOHANNAD ABUL HASAN KHAN *v* LAXMI NARAIN. **26 C.W N. 249 = 1922 P.C. 41 (P.C.).**

———*Construction*—Contemporanea expositio—*Grant by sanad—'Lands attached to Deur'—History of the tenure—Succession—Impartible estate.*

GRANT—Construction.

Contemporanea expositio as a guide to the interpretation of documents is often accompanied with danger and must be applied very carefully. Where, however, the document to be interpreted was a sanad granted by the Government of a general and informal character and the ambiguity covered the geographical and pecuniary extent of an admittedly ambiguous grant. *Held*, that it was legitimate to observe what the footing was on which the grantors, namely, the Government and its officials, from the date of the grant and for a long period of time proceeded. The words 'the lands attached to Daur' in the sanad in this case dated 1861, whereby the title of 'Rajah' was conferred on the father of the parties to the suit, extended to the whole of the lands in the Bombay Presidency scheduled to the plaint. Having regard to the fact that the lands had been *jagir* prior to the grant and for a long period of time had been treated as an appendage to the title of Rajah by the Government, its successors and officials, the estate must be held to be impartible and the succession to it subject to the law of *primogeniture*. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB.
36 Bom. 639 = 39 I.A. 202 = 16 C W.N. 1053 = 23 M.L J. 383 = 12 M.L T. 472 = (1912) M.W.N. 1140 = 14 Bom L.R. 1226 = 16 I C. 239 = 17 C.L.J. 17 (P.C).

———*Construction—Rights of grantee.*

The rights of a grantee of land and his descendants must be determined by reference to the original *sanad* and not by the conduct of the parties. (*Piggott and Rafiqus*, JJ.) KANIZ FATIMA *v.* SAKINA BIBI.
36 All. 318 = 25 I.C. 120 = 12 A.L.J. 437.

———*Construction—Settlement of property by Government on certain persons as representing the old proprietor—Whether any trust in favour of the rightful heir of the old proprietor.*

The revenue of a village falling in arrears, the Government got it sold, purchased the same and remained in possession by leasing the lands to the old proprietors and their heirs whose names were recorded in the *Khewat*. One of the proprietors died and on a dispute between the brother and the widow of the deceased the latter was recognised by the Revenue authorities as the rightful heir and put in possession. Subsequently, the Government resolving to settle the lands on the old proprietors as represented by *Khewatdars*, granted the land to the widow. In a suit by the husband's brother against the widow to declare his right to the property on the ground that he was entitled to the land and the widow was only a trustee. *Held*, that the intention of the Government was to give the lands only to those persons whose names were on the *Khewat* at the time and that there was no trust. (*Tudball*, J.) MADHO *v.* BHAGIA.
22 I.C. 621 = 12 A L.J. 4.

———*Construction — Grant to 'Aulad Wa Ahfad'—Meaning of.*

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Where land was granted to one for life and after him to his 'Aulad War Ahfad', *i.e.*, to his issues and descendants, *held*, that it was not confined to the male descendant alone. (*Richards*, C.J. *and Banerji*, J.) NURULLAH KHAN *v.* HAYATUNNISSA. **13 I C. 153.**

———*Construction—Confiscation—Effect of.*

The true effect of an order for confiscation must depend on its terms. (*Mookerjee and Cholzner*, JJ.) NURUL HUQ *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR.
38 C.L.J. 121 = 1924 Cal. 783.

———*Construction—Authority to give—Burden of proof*—Putra poutradi Krame—*Meaning of.*

Rent free grants was made 70 years back to excavate tanks and to hold them *putra poutradi Krame*. In a suit to recover possession by the heirs of the grantor, the burden of proof is initially on the grantees' heirs to show the grantor authority to make but where the grant has been in operation for a long term, and the grantor or his heirs have never taken any steps in ejectment, the burden is shifted on the plaintiffs to prove how they came to acquiesce in it. The Court can in such a case draw the inference that the grantor can do it. The use of the words "*putra poutradi Krame*" made it perpetual and hence transferable. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SIRISH CHANDRA GHOSH MANDAL.
27 C W.N. 964 = 1924 Cal. 236.

———*Construction—Nature of—Rent free—Long possession.*

Mere possession of land for a long series of years without payment of rent does not necessarily give rise to a rent free grant. (*Mookerjee and Beachcroft*, JJ.) GIRIJI NATH ROY CHOWDHURY *v.* CHANDI CHARAN LAHA.
38 C.L.J. 307.

———*Construction—Mode of user.*

Where the terms of the original grant are ambiguous or where they cannot be proved by direct evidence a reference to the mode of user of the lands is legitimate. 16 C.L J. 322 ; 46 C. 160 Ref. (*Mookerjee and Cuming*, JJ.) RANI HEMANTA KUMARI DEBI *v.* THE MIDNAPORE ZEMINDARI CO. **35 C L.J. 493 = 1923 Cal. 25.**

———*Construction — Surrounding circumstances—Extrinsic evidence.*

The construction of a grant depends on the interpretation of all the terms of each instrument. Except in cases of ambiguity, extrinsic evidence would not be admissible. Each case must be considered on its own facts. 46 I A. 123 Ref. (*Mookerjee and Cholzner*, JJ.) ABINASH CHANDRA DAS *v* MAJUB ALI CHOWDHURY.
36 C.L J. 196 = 27 C.W.N. 328 = 1922 Cal. 461.

———*Construction — Government grant—Talukdari Patta—Grantee given heritable and transferable right—Revenue to be assessed at certain increasing rate.*

In 1790 the plaintiff's predecessor obtained from the Government a permanent grant by

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sanad in taluki right of a certain village. The maximum assessment of the revenue was to be 8 as. per Bigha. The Government alleged that the taluk was wrongly entered as a permanently settled estate in the records and assessed certain lands within the boundaries specified in the Patta at 12 as. per Bigha, *held* the plaintiff is entitled to a declaration that the Government has no right to assess the lands included within the boundaries of the plaintiff's taluk at a higher rate than 8 as. (*Woodroffe and Cuming*, JJ.) PARBATI CHARAN SAHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **69 I.C. 188=33 C.L.J. 443.**

———*Construction — Grant for indefinite period.*

A grant for an indefinite period is generally for his life and would pass to heirs only where there are some words showing an intention to pass hereditary interest. (*Richardson and Huda*, JJ.) JOGESH CHANDRA ROY *v.* MAKBUL ALI. **47 Cal. 979=60 I.C. 984=25 C.W.N. 857.**

——— —*Construction—Land bounded by river.*

Having regard to the boundaries of the land demised and in the absence of evidence to show that the rivers at the date of the grant were public navigable rivers. *Held*, that the boundaries on the south and the west extended to the middle of the two rivers. (*Fletcher and Ghose*, JJ.) SECRETARY OF STATE FOR INDIA *v.* JATINDRA NATH CHAUDHURY. **58 I.C. 778=24 C.W.N. 737.**

——— ——*Construction — Ancient document—Conduct.*

Ancient grant deeds which are ambiguous in their terms may be construed in the light of the conduct of the parties with reference to the property granted. But this principle cannot be applied where there is no ambiguity. (*Mookerjee and Beachcroft*, JJ.) HULADA PRASAD *v.* KALIDAS NAIK. **42 Cal. 536=20 C.L.J 312=24 I.C. 899=19 C.W.N. 542.**

———*Construction — Rent free — Tank known by the name of an ancestor—Use of, for generations—Inference.*

In case of a tank, popularly known by the name of the great-grandfather of a person and used by the family of such persons for four generations without any rent in respect of it having been either claimed or paid, it may be legitimately inferred that the tank was held under a rent-free grant. (*Mookerjee and Beachcroft*, JJ.) BIRENDRA KISHORE MANIKYA BAHADUR *v.* CHANDI CHARAN DEY. **24 I.C. 354 (1)=22 C.L.J. 134.**

———*Construction—Evidence of conduct—Ambiguity.*

Where the terms of a grant are ambiguous its nature may be determined by a reference to the subsequent conduct of the parties. (*Mookerjee and Beachcroft*, JJ.) SRI RADHA MADHAB NARAN (DEB) HIKIM *v.* MILAN MAHATO. **21 I.C. 204=18 C.L.J. 23.**

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———*Construction*—Maifasand — *Heritable interest in perpetuity.*

Where a grant is made to a person *Maifarzandan* it is a heritable grant in perpetuity. (*Mookerjee and Holmwood*, JJ.) SECRETARY OF STATE *v.* RASHIDUL HUQ. **21 I.C. 93=18 C.L.J. 31.**

———*Construction—Ambiguity—Conduct of parties.*

Where the terms of a grant are ambiguous the conduct of the parties may be taken into account to determine its true nature. 15 C.W.N. 63 ; 15 C.W.N. 902, Foll. (*Mookerjee and Beachcroft*, JJ.) HEADYAT ALI *v.* KALANAND SINGH. **20 I.C. 332=17 C.L.J. 411.**

———*Construction — Hereditary—Omission of words of inheritance—Long usage.*

The omission of words of inheritance in a *sanad* confirming a previous grant for purposes of service is not sufficient proof *per se* that the grant is not hereditary, when evidence of long and uninterrupted usage shows that the lands have descended from father to son for more than 100 years. 14 M.I.A. 247 Foll. (*Mookerjee and Beachcroft*, JJ.) MAHADEO LAL *v.* KALANAND SINGH. **20 I.C. 69=19 C.L.J. 241.**

———*Construction— Evidence of conduct—Ambiguous grant.*

Where the terms of an original grant are ambiguous or the terms upon which the tenancy was created cannot be proved by direct evidence the subsequent conduct of the parties may be considered for the purpose of determining the nature of the tenancy. 15 C.W.N. 902 ; 15 C.W.N. 896 Rel. (*Mookerjee and Beachcroft*, JJ.) BAMAPADA ROY *v.* MIDNAPUR ZAMINDARI CO., LTD. **16 I.C. 376=16 C.L.J. 322.**

———*Construction—Conveyance for consideration—Naslan Bad Naslan—Absolute estate to the family of grantor.*

F settled some lands on the family of the deceased by three sanads. F had thereby settled all possible claims against him and neither the grantor, nor his heirs were to have any further right, interest or title in the lands conveyed, the grantor's heirs sued for possession of the lands granted on the extinction of the grantee's time. *Held*, that the grant was a conveyance for valuable consideration and not a voluntary transfer. It was clearly intended to confer on perpetual and absolute estate it did not revert to the grantor's family. (*Rattigan*, J.) AHMAD HUSSAIN *v.* RUL INDAR SINGH. **14 I.C. 73=107 P.W.R. 1912.**

———*Construction— Resumable grant — Charity—Service tenure.*

Where a person alleged that a tenure is resumable the burden of proving the allegation is on him and not on the grantee. 28 B. 305 referred to. Under the terms of a grant it was specified that the grantee was to enjoy the lands conducting *vashipadu* to the diety. *Held* that the grant was not a service grant and that

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the offering of *vazhibadu* simply meant the "offering of rice of which the greater part returned to the grantor." (*Ayling and Ramesam*, JJ.) RAMASAMI PATTAR *v.* LAKSHMI.

17 L.W. 514=32 M.L.T. (H.C.) 399=(1923) M.W.N. 843=1923 Mad. 572.

———*—Construction—Inam— Proceedings of Inam Commissioner.*

Where there is an inam grant, the Court must construe its terms for itself and the decision of the Inam Commissioner is not conclusive. It is not safe to interpret one document by reference to recitals in another document. It is only where the Court has given a definite meaning to certain expressions that that meaning should be applied to such expressions in other cases. In interpreting deeds and contracts, great weight should be attached to the recitals in the documents themselves in gathering the intentions of the parties thereto. (*Phillips and Devadoss*, JJ.) JAGGA RAO BAHADUR GARU *v.* GONHAR BIBI.

17 L.W. 521=(1923 M.W.N. 347=1923 Mad. 545.

———*Construction—Implied term — When presumed.*

A term will not be implied in a grant or contract unless the court is driven to the conclusion that the parties must necessarily have intended that stipulation and in that case only to the limited extent absolutely necessary to carry out what is believed to be their intention. (*Schwabe*, C.J., *Coutts Trotter and Kumaraswami Sastri*, JJ.) TIRUNEELAKANTAM SERVAI *v.* RAJA OF RAMNAD.

43 M.L.J. 158=15 L.W. 556=30 M.L.T. 317=46 M. 177=1922 Mad. 263.

———*—Construction—Havelli land sold by E.I. Co.-Sanad constituting—Vendee—Zamindar—Peishcush—Lankas if included in the grant—Subsequent conduct of Government servants—Limitation.*

Certain villages on the bank of the Krishna river belonging to Government were sold by them in 1802 to the predecessor in title of the Zemindar of Vallur and a sanad was issued in 1803 fixing peishcush at a certain amount which included also the income from mustard shown on the lankas and keelankbas left by the subsiding of the flood of the river and it appeared that both prior and subsequent to the grant so much of the river bed as was within the *ad medium filum* limit was treated and enjoyed by the owners on either bank with the knowledge and acquiescence of the Government as forming the riverbed *ayakat* of the villages abutting on the river, the Government having remained quiet, probably under the erroneous view that the English Law negativing the right of the Crown to the bed of a non-tidal river also applied to India. A question arose in 1911 between the grantee and the Government as to whether the grant of 1803 included also the portion of the riverbed adjacent to the village granted. Under the

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facts and the circumstances and in the absence of a special reservation in favour of the Crown, even giving full weight to the principle that grants by the Crown must be construed strictly in favour of the Crown, the grant in question included the rivers bed *ayakat* area as part of the villages which were expressly mentioned. Even if there were any doubts or ambiguity as to what exactly was included in that grant of 1803, the nature of the subsequent possession by the grantee and the conduct, assertions and declarations of the parties from and after the grant and the views entertained by the grantor at the time of the grant can be legitimately referred to as evidence of the nature and extent of the grant. (1907) A.C. 369 ; 27 M. 131, P.C. ; 15 M. 101 ; (1879) A.C. 670, Ref. (*Sadasiva Aiyar and Burn*, JJ.) SECRETARY OF STATE *v.* VENKATANARASIMHA NAIDU.

27 M.L.T. 147=(1920) M.W.N. 209=58 I.C. 689=11 L.W. 256.

———*Construction—Principles — Grantor's rights—Consideration.*

Prima facie the terms of a grant should be looked to, to ascertain the nature of the estate granted by it and it is only where there is any doubt about its import that other considerations can be taken into account. Where the language is unambiguous and clear, the extent of the right possessed by the grantor should have no weight. 45 C. 733, Foll. (*Seshagiri Aiyar and Phillips*, JJ.) CHOCKALINGA NAYAKAN *v.* ARUNACHALAM CHETTIAR.

26 M.L.T. 262=52 I.C. 239=(1919) M.W.N. 353.

———*Construction—Land bounded by non-navigable river—Right to bed of the river ad medium filum aquae—Presumption—Onus.*

Where there is a grant of land described as bounded by a non-navigable river the onus of showing that the grant did not cover the bed *ad medium filum a quoe* is on the grantor or his representative. The presumption may be strong or weak according to the circumstances of the particular case, and the amount of evidence required to rebut it will vary accordingly. Cases reviewed. (*Wallis*, C.J., *Sadasiva Aiyar*, *Oldfield*, *Spencer and Bakewell*, JJ.) SRI RAJAH VENKATA LAKSHIMI NARASIMHA *v.* THE SECRETARY OF STATE FOR INDIA.

41 Mad. 840=33 M.L.J. 159=47 I.C. 606=(1918) M.W.N. 662 (F.B.).

———*—Construction—*Contemporanea exposito—*Application.*

The doctrine of *contemporanea exposito* must be confined to the acts and the conduct of the grantor beginning contemporaneously with the grant and continued for a long course of years and should not be extended to acts and conduct done, say, 40 years after the date of the grant. 36 B. 639 (P.C.) Foll. (*Sadasiva Aiyar and Spencer*, JJ.) SWAMINATHA MUDALI *v.* SARAVANA MUDALI.

40 I.C. 881=33 M.L.J. 370.

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———*Construction—Kayam patta—Heritable and transferable.*

The words 'Kayam patta' means *prima facie* a perpetual lease. Where a kayam patta grant was made in 1857 and the grantees dealt with the lands as if they were entitled to permanent rights and the grantor and grantee both shared a land acquisition compensation and there was evidence proving that the grantor regarded the grant in the same terms of neighbouring villagers as a permanent grant: *Held*, that in the circumstances described above that a heritable grant was conveyed, though that intention has not been indicated by the use of the words 'from son to grandson' or from generation to generation as is usually done. *Prima facie* the words 'Kayam patta' mean perpetual lease; but a long course of decisions have held that these words and the words 'istimrari mokurary' and 'Kayam sasvata' do not *prima facie* convey more than life estates. But in construing grants the surrounding circumstances have to be looked into. (*Wallis*, O.C.J. *and Coutts Trotter*, J.) VENKATARAMANNA *v.* VENKATAPATHI NAYANI VARU. **28 M.L.J. 510 = (1915) M.W.N. 313 = 29 I.C. 188 = 17 M.L.T. 269**

———*Construction — Beneficial interpretation.*

The correct rule of interpretation of a document with doubtful import is that the benefit of the construction should be given to the grantee. (*Macnair*, A.J.C.) RAMU *v.* SADOO. **58 I.C. 954.**

———*Construction—Sanad—'Rule of primogeniture in'—'Lineal primogeniture.'*

The 'Rule of primogeniture' in the sanad granted by the Governor-General was founded on that of English rules, *viz*, 'lineal primogeniture.' The Sanad resembles to some extent an estate in fee simple but is differentiated in that the former excludes females; it resembles to some extent an estate in tail male, with this difference that a collateral can succeed under the terms of sanad. The word 'Successors' means 'successors on death' including both heirs and devisees but not transferees during life-time. 31 I.C. 748 at 764 and 765. 'Nearest male heir' is not to be interpreted as 'nearest male heir according to the personal law of the grantee'. (*Stuart and Kanhaiya Lal*, A.J.Cs.) GHULAM ABHAS KHAN *v.* BIBI UMMATUL FATIMA. **18 O.C. 188 = 31 I.C. 743 = 2 O.L.J. 636.**

———*Construction—Muafi lands—47 years' possession from the first regular settlement—Presumption.*

Where a Muafidar proved by means of a copy of the *khasra* of the first regular settlement that the Muafi land was in possession of his ancestor and since that date to the date of the institution of the suit the possession amounted to 47 years: *Held*, that under such circumstances a presumption could fairly be made that the land was held for 50 years. (*Baillie*, S. M.) LACHHMAN PRASAD *v.* RAM TIRATH DAS. **24 I.C. 781 (2) = 1 O.L.J. 275.**

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———*Construction—Jaghir—Life estate.*

In the absence of words clearly indicating a contrary intention a jaghir is presumed to be the grant of an estate only for life. 3 Bom. 186; 46 C. 683; (1921) Pat. 369 referred to. (*Miller*, C.J., *and Mullick*, J.) GURU MAHADEO ASRAM PRASAD SINGH *v.* JAGATRAJ KUER. **71 I.C. 929.**

———*Construction—Jagir to person and his heirs—Nature of estate taken.*

Where the grant of jagir is made to a person and his heirs and there is nothing to control the ordinary meaning of the words, the grantee takes an absolute interest. 15 Bom. 422, Foll. (*Das and Adami*, JJ.) GULAM NABI *v.* CHOUDHURI BASUDEB DAS. **1 P. 201 = 1922 P. 411.**

———*Construction—What passes—Adha and Urdha—Meaning.*

When the word 'Adha' is used in a grant the entire region from the surface to the centre of the earth vests in the grantee when 'Adha and Urdha' are used the grant has the same effect. (*Jwala Prasad and Adami*, JJ.) RAMLAL *v.* SATYHYA NIRANJAN CHAKRAVARTI. **6 P.L.J. 563 = 1 P.L.T. 474 = 57 I.C. 786 = (1921) Pat. 49.**

———*Construction — 'Putra pautradi'—Meaning of.*

Per Atkinson, J.—The words of limitation 'Putra pautradi' used in a grant convey an absolute perpetual estate in the lands descendible from generation to generation coupled with full power of alienation, though these words may be controlled by custom limiting their scope and operation. (*Per Chapman*, J.) In 1765, before the advent of the British jurisdiction in Chota Nagpur the words 'putra pautradi' had not acquired a technical significance and the Privy Council decisions dealing with this expression were in respect of wills prior to 1868 by which time it had acquired a technical significance. (*Chapman and Atkinson*, JJ.) LAL GAGENDRA NATH SAHI DEO *v.* LAL MATHURALAL NATH SAHI DEO. **20 C.W.N. 876 = 35 I.C. 383 = 1 P.L.J. 109.**

Dharkhast.

———*Dharkhast — Grant by Subordinate Revenue Officer — Improvements — T P. Act, S. 51—Standing orders of the Board of Revenue.*

O. 15, cl. 16 of the Board's standing orders empowers the Deputy Collector to cancel the grant of Dharkhast, if at any time within three years, he is satisfied that the decision was passed under a mistake of fact. The mistake of fact need not be such as would render an agreement void under S. 20 of the Contract Act. The limitation that the interests of Government or the public should be affected by the grant if it is sought to be revoked, applies only

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to cases in which the grant exceeds the limit of authority possessed by the officer making it but not to decisions passed under a mistake of fact or owing to fraud or misrepresentation. 26 M. 268, Dist. (*Ayling and Napier*, JJ.) DRVARAMANI BHOGAPPA *v.* PEDDA BHINAKA GOWD. **28 I.C. 51=(1915) M.W.N. 148**

———*Dharkkast—Right of Government.*

Plaintiff applied for Dharkhast grants and was granted on condition that he would not get the land if subsequently required for by Government for a railway. *Held* (*Sadasiva Aiyar*, J.) the lands were on temporary grants and plaintiff could get no compensation if they were taken by Government for railway. (*Seshagiri Aiyar*, J.) Plaintiff got no property in the lands till the Railway question was decided and he could not contend that he would not surrender if required for anything except Railway. The meaning of *Shivai jama* explained. In the case of *Shivaijama* system no property passes to the cultivator and the land continues to be at the absolute disposal of the Government. (*Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) ALEMAN RAM RAO *v.* SECRETARY OF STATE. **1 L.W. 339=24 I.C. 904=(1914) M.W.N. 388.**

Ferry.

———*Ferry—Crown grant—Right to ply boats—Prescription.*

Where the Zemindars of a certain *mouza* were found to have used a ferry continuously and for a long time, their right is entitled to prevail unless the plaintiffs who were starting up an opposition ferry could show a Crown grant or could give evidence from which a Crown grant could be presumed. (*Knox*, J.) JWALA SINGH *v.* ARDUL RAZAK. **29 I.C. 692=13 A.L.J. 775.**

Fishery.

———*Fishery—Exclusive fishery—Evidence of grant—Ancient grant—Evidence of conduct.*

The evidence of a Government grant of an exclusive fishery in navigable rivers ought to be conclusive and clear. In the case of grants of more than a century old, as the original grants are but rarely forthcoming, recourse must be had to secondary evidence of them or to the inference of a legal origin to be drawn from long user. (*Lord Sumner.*) SRINATH ROY *v.* DINABANDHU SEN. **42 Cal. 489=41 I.A. 221=18 C.W.N. 1217=(1914) M.W.N. 654=1 L.W. 733=16 M.L.T. 319=12 A.L.J. 1193=20 C.L.J. 385=25 I.C. 467=16 Bom. L.R. 901 (P.C.)**

———*Fishery—Lost grant—Easements Act, S. 15.*

No presumption of a lost grant can be made in the case of the right of fishery where the use of the fishery was in harmony with the right of the public to fish by stakes which is an acknowledged method of public fishing on the

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West Coast of India. (*Marten*, J.) LAKSHMAN *v.* RAMJI. **23 Bom. L.R. 939.**

Implied Grant.

———*Implied grant—Right of way—Long enjoyment—Effect—Pleadings and proof.*

The enjoyment of a right of way for about 70 years is evidence of a grant or other legal origin. In claiming right of way, the plaintiff should state whether he claims the right by prescription, grant, or in any other way and the defendant should know by which title the plaintiff claims the right as otherwise he might be seriously prejudiced. Where, however, the plaint stated facts, which if proved, would be evidence of a grant and also establish a right by prescription and an issue was framed sufficiently wide to cover both the aspects of the right, there can be no prejudice to the defendant. (*N. R. Chatterjee and Greaves*, JJ.) KSHIROD CHANDRA GHOSE *v.* SRISHCHANDRA GHOSE. **28 I.C. 894.**

———*Implied grant—Rent-free—Long possession—Presumption.*

Long possession without payment of rent justifies an inference of a rent-free grant. 10 W.R. 61; 14 W.R. 108, Foll. (*Mookerjee and Beachcroft*, JJ.) NAWABI ALI *v.* BIRENDRA KISHORE MONIKYA BAHADER. **24 I.C. 424=22 C.L.J. 125**

———*Implied grant—Rent-free—Presumption—Long possession.*

The principle that long possession without payment of rent may justify an inference that the possessor holds under a rent-free grant does not apply where such possession may be attributed to a lawful origin other than a rent-free grant. (*Mookerjee and Beachcroft*, JJ.) GIRIJANATH ROY *v.* CHANDI CHARAN. **24 I.C. 286.**

———*Implied grant—Easement—Presumption from long user.*

The use by the tenants of a tank belonging to the landlord from time immemorial for irrigation purposes will justify an inference that the servants had acquired to a right to irrigate their lands from the water of the tank by a presumed grant. 4 C. 633, P.C., Ref. to. (*Beachcroft and Newbould*, JJ.) BHUPENDRA NATH *v.* ANANDA PRASAD. **20 I.C. 359.**

———*Implied grant—Effect of acknowledgment by Talukdar.*

A grant can be presumed from an acknowledgment by the Taluqdar. 9 O.C. 167, Foll. (*Kanhaiya Lal*, A.J.C.) KISHAN *v.* SHYAM SUNDAR. **35 I.C. 441=19 O.C. 27.**

———*Implied grant—Inference from user.*

Where the plaint contained a plea of immemorial user, the Court can legitimately draw an inference of grant from such user. (*Ghose*, J.) AMRITANATH BISWAS *v.* JOGENDRA CHANDRA BHATTACHARJEE. **1922 P. 484.**

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———*—Implied grant—Rent free—Non-payment of rent for a long number of years—Whether evidence of rent free grant—Presumption.*

The fact that no rent has been paid for a large number of years in respect of a parcel of land is evidence of a grant of the land rent-free, but it is not conclusive evidence. The Court should look to the nature, scope and character of grant. 22 C.L.J. 126, Ref. (*Chapman and Atkinson*, JJ.) NAIK PANDEY *v.* RAJDHARI LALL. **3 P L.W. 220 = 42 I.C. 843 = (1917) Pat. 295.**

———*—Implied grant—Presumption of lost grant—Basis of.*

In the case of a presumption of lost grant in favour of a person, actual user and enjoyment by the person is the only basis for the presumption and so when there is evidence only of use of surface rights of a *mouza* by cultivation, no presumption of lost grant to exercise mineral rights in the *mouza* can be made. (*Atkinson and Kingsford*, JJ.) NAWAGARH COAL CO., LTD. *v.* BEHARI LAL. **20 C.W.N. 1135 = 1 P.L J. 275 = 37 I C. 430 = 2 P.L.W. 324.**

Inam.

———*—Inam* — Dharmadaya—*Determination of the nature of tenure—Summary Settlement Act* (II *of* 1863) *S.* 16.

Where the grant made was Inam *Dharmadaya* and was to be hereditary : *Held* the signification of such a grant is that it was made on grounds of religion, and not on political grounds. The mere fact that in occasional correspondence the grant is referred to as "jagir" or "saranjam", *i.e.*, political, cannot derogate from the effect of the language of the grant itself. The question whether the tenure was political was one which was for determination by the Government under the provisions of the interpretation S 16 of the Summary Settlement Act (II of 1863) and that, by treating the title as one to which the act applied, the Government must determine that the tenure was not political. (*Viscount Haldane.*) MAHARAJA OF KOLHAPUR *v.* SHRI BALA MAHARAJ. **33 M L T. 378 = 50 I.A 308 = (1923) M.W N. 638 = 48 Bom. 1 = 26 Bom L R 252 = 1923 P.C. 194 (P.C.).**

——*—Inam—Grant of both warams—No presumption as to.*

In the case of an inam grant there is no presumption that both the warams were granted to the Inamdar or only that the melwaram was granted. It is a question of fact to be decided on the evidence in each case. 41 M. 1012 ; 43 M. 166 ; 43 M. 567 Ref. 44 M. 588 disapproved. (*Mr. Ameer Ali*). SRI CHIDAMBARA SIVAPRAKASA PANDARA SANNADHIGAL *v.* VEERAMA REDDI. **45 Mad. 586 = 43 M.L.J. 640 = 16 L W. 102 = 31 M L.T. 54 (P.C.) = (1922) M.W.N. 749 = 49 I.A. 236 = 1922 P.C. 292 (P.C.)**

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———*—Inam—Desai Inam—Summary settlement— Quit-rent — Imposition of — Right of inamdar to alienate—Bombay Summary Settlement Act* (II *of* 1863), *S.* 12.

The ancestors of the testator had held the office of Desai (Chief Revenue Officer) under native rulers from the 17th century, and from time to time received grants of villages. The services of the *desais* as Revenue Collectors were not required by the British Government. In 1862 the Government officials after an investigation, offered a summary settlement of the lands to the *Desai* who accepted it subject to the commutation payment in the nature of a Nazarana or quit-rent. Settlements so made were expressly validated by S. 12 of Bom. Act II of 1863. The last *Desai* died in 1906 without co-parceners, having disposed of the lands by will. *Held*, that the High Court was right in holding that the lands were alienable like ordinary property and passed under the will. (*Sir John Edge.*) SUNDERBAI *v.* COLLECTOR OF BELGAUM. **43 Bom. 376 = (1919) M.W.N. 234 = 23 C.W.N. 733 = 21 Bom. L.R. 1148 = 52 I.C. 897 = 46 I A. 15 (P.C.).**

[On appeal from 38 Bom. 272 = 23 I C. 221 = 16 Bom. L R. 161].

——*—Inam—Presumption—Grant of village by Zamindar—Brahmin grantee.*

There is no presumption that the Melwaram or right to land revenue alone was granted in the case of an inam granted by a Zemindar to a Brahmin. (*Viscoun tCave.*) UPADRASHTA VENKATA SASTRULU *v.* DIVIR SEETHARAMUDU. **43 Mad. 166 = 17 A L.J. 725 = 37 M L J. 42 = 21 Bom. L.R. 925 = 26 M.L T. 173 = 30 C L J. 441 = 10 L W. 633 = 24 C.W N. 129 = 51 I.C 301 = 46 I.A. 123 (P.C.).**

[Reversing 38 Mad. 891 = 24 I.C. 224 = 26 M.L J. 885].

———*—Inam — Presumption of grant of revenue only—None.*

There is no presumption that the grant of an inam (agraharam) by a native ruler prior to British rule conveyed only the melwaram or royal share of the revenue (*Sir John Edge.*) SURYANARAYANA *v.* PATANNA. **41 Mad 1012 = 25 M L T 30 = (1918) M.W.N 859 = 23 C.W.N. 273 = 9 L W. 128 = 29 C L J. 153 = 1 U.P.L.R (P.C.) 11 = 33 M L J. 585 = 21 Bom. L R 517 = (1919) M W N. 463 = 48 I.C. 689 = 45 I.A. 209 (P C).**

[Reversing 38 Mad 608 = 26 M L J 99 = 22 I C. 339 = 15 M.L.T. 268]

———*—Inam—Title-deed—Value of—Antecedent state of affairs.*

Where, the precise terms of an Inam grant by a native ruler, could not be ascertained either owing to the loss of the original grant or other circumstances, the inam title-deeds conferred by Government are of great assistance

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in finding out the antecedent circumstances relating to the grant. (*Sir Walter Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.
41 Mad. 216=7 L.W. 22=
4 Pat. L.W. 91=34 M L J. 130=
16 A.L.J. 113=22 C.W.N. 457=
20 Bom. L R. 515=45 I.A. 1=
43 I.C. 806=27 C.L J. 231 (P.C.).
[Also 43 Mad. 253=53 I.C. 238=46 I.A 204.]
[On appeal from 34 Mad. 470=
20 M.L.J. 103=4 I.C 76=6 M L T. 319.]

———*Inam—Resumption — Situate within Zemindari.*

Inams are Government grants subject to quit-rents and in some instances to services. They were not assessed for land revenue at the date of the permanent settlement. Where the quit-rents payable in respect of inams in a Zemindari were treated as Zamindari assets and taken into account in fixing the jumma or peishcush, the Zemindar is entitled to the inam lands on resumption or acquisition in other ways. (*Lord Parker.*) KANDUKURI BALASURYA PRASADA RAO *v* SECRETARY OF STATE FOR INDIA. 40 Mad. 886=
44 I.A. 163=33 M L J. 144=
22 M.L.T. 76=18 A.L.J. 697=
21 C.W.N. 1089=(1917) M W.N. 536=
19 Bom. L R. 731=6 L.W. 310=
2 Pat. L W. 260=41 I.C. 98=
26 C.L.J. 290 (P.C.).
[On appeal from 34 Mad, 295=
20 M.L J. 813=8 M.L.T. 389=
8 I.C. 67=(1910) M.W.N. 893.]

———*Inam—Jaghir—Saranjam.*

The term inam is of generic significance, applicable to Government grant as a whole and includes saranjams. Saranjam is the Marathi equivalent for a jaghir. A jaghir is ordinarily the grant of the revenue and not of the soil. Jaghir tenure is personal, not hereditary and is resumable at pleasure and is therefore impartible. (*Lord Shaw.*) RAGHAJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. 36 Bom. 639=
39 I.A. 202=16 C.W.N 1068=
23 M L J 383=12 M.L.T. 472=
(1912) M.W.N. 1140=14 Bom. L R. 1226=
16 I.C. 239=17 C.L.J. 17 (P.C.).

———*Inam—Presumption as to what passes —Recent Privy Council rulings on the law.*

Grant of village by the Crown under the British rule is presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of grant may have had. (*Macleod*, C.J. *and Shah*, J.) TUNJABAI GOPAL DESHAI *v.* KRISHNAJI RAMACHANDRA DESHPANDE.
24 Bom. L.R 252=46 Bom. 741=
1922 Bom. 5.

———*Inam—Land or revenue — Vatan—Construction.*

In the case of Vatan property the distinction between the grants of the royal share of revenue and grants of the soil cannot be conveniently made without detriment to the statutory restriction on the Vatandar's power of alienation and should not be made unless it is clearly justified by the terms of the grant. (*Shah and Hayward*, JJ.) AMRIT VAMAN *v.* HARI GOVIND
44 Bom. 257=56 I C. 411=
22 Bom. L. R. 275.

———*Inam—Resumption.*

Lands granted *pro servitis impensis et impodondis*, i.e., on account partly of services already rendered and partly of services to be rendered in the future may be resumed for wilful default. (1870) 13 M.I.A. 438, Foll. (*Batchelor*, A.C.J. *and Kemp*, J.) YAMUNABAI *v.* LAGMANNA. 52 I C. 770=
21 Bom. L R 820.

———*Inam—Resumption — Land burdened with services—Grants of office to which lands are annexed by way of remuneration—Onus.*

For the purposes of resumption, grants fall into two main categories, grants of land burdened with service, and grants of office to which lands are annexed by way of remuneration instead of, or along with cash. The former grants are always irresumable, unless the grantor can show that they have been specially conditioned so as to enable him to resume for failure to perform these services or at his own will to discontinue the service and resume the lands. Grants under the second category are always resumable unless the grantee can show that they have been specially conditioned otherwise so as to prevent their resumability. In every case the burden of proof is upon the grantor suing to resume, to show that either the grant was of a kind falling under the second category, or if a grant of the kind, falling under the first category, that it was specially conditioned. 28 B. 305, 39 B. 68; 18 Bom. L.R. 695, Foll. (*Beaman and Heaton*, JJ.) CHANDRAPPA *v* BHIMA. 43 Bom. 37=
47 I C. 330=20 Bom. L.R. 779.

———*Inam—Kadim Haks—Right of the inamdar to pay haks allowances direct to the hakdars.*

A village was granted to the ancestors of the plaintiff as the personal inam by the Peishwa, the grant having been 'exclusive of the Hakdars and *Inamdars*.' The inam was continued by the British Government on the same terms. The plaintiff claimed the right to pay the *Kadim Haks* of *Gramjoshi*, *Naikwadi* and *Chowgula* direct to the *Hakdars* in question and not through the British Government. *Held*, negativing the claim, that the manner of payment of the *Haks*, in the past gave no support to the plaintiff's contention that he was entitled to pay direct; the grant showed that the rights of the *Hakdars* were secured and one of those rights was the right of dealing directly with the Government. (*Heaton and Shah*, JJ.) CHINTAMAN *v.* SECRETARY OF STATE. 30 I.C. 548=17 Bom. L.R. 682.

———*Inam—Deshghat Vatan—Barkhi services—Resumption.*

In the Bombay Presidency, where there is a grant of Deshghat Vatan lands for personal

services, it cannot be presumed that the grantor has the option to determine the services and to resume the lands. The right, when claimed, must be made to appear from the terms of the grant or the proved circumstances of the case. (*Heaton and Shah, JJ.*) YELLAVA *v.* BHIMAPPA. **39 Bom 68=28 I C. 12=17 Bom. L R. 128.**

———*Inam prior to* 1802—*Presumption.*

Where lands were granted in inam prior to 1802, that fact is strong evidence to raise the presumption that they were exoluded from the Permanent Settlement. (*Ayling and Odgers, JJ.*) TOTA VARAHALIAH *v.* SREE VENKATA SURYANARAYANA. **18 L R. 324=(1923) M.W.N. 732=1924 M. 117.**

———*Inam—Burden of Proof—Widow.*

There is no presumption that an Inam grant by a Zemindar is a grant of both the warams or of the melwaram only. The nature of the grant must be determined from the evidence in the case. 36 M.L.J. 585 ; 41 M. 1132 ; 37 M.L.J. 42 ; 45 M. 586 ; 43 M.L.J. 640 (P.C.) Referred to. (*Phillips and Devadoss, JJ.*) SRI RAJA VENKATARANGAYYA APPARAO BAHADUR *v.* MORAMPUDI RAJIRAJU. **43 M.L.J. 238=(1923) M W N. 765=1924 Mad. 93.**

———*Inam—Charity inam—Share of the proceeds of the inam appropriated to the private use of the inamdar—Effect of.*

The fact that a third share of the proceeds of an inam has been appropriated by the inamdars for their private uses does not make it the less a charity inam for the grant was only one and could not be split up into parts—a personal grant of one-third and a charity grant of two thirds of the inam. 40 M. 116 Rel. on. (*Ayling and Ramesam, JJ.*) SUNDARARAJA CHARIAR *v.* ALI MAHOMED ETHIBAR KHAN SAIB. **44 M.L J. 649=1923 Mad. 661.**

———*Inam—Service Inam—Surplus income—Right to—Resumption on failure of service—Rights of Government—Powers of Court.*

Where there is an inam burdened with a trust, the surplus remaining after the expenses of the trust have been met belongs to the inamdar and he is not accountable therefor. 30 M.L.T. 101 ; 15 L. W. 241 Ref. It is not for the Court to treat inams as resumed on the ground of the services having become unnecessary. The power of resumption rests only with the Government and the Government alone can give directions for application of its income. (*Spencer and Devadoss, JJ.*) JAKKAM REDDI SESHADRI REDDI *v.* PICHI REDDI. **32 M.L.T. (H.C.) 89=1923 Mad. 163.**

———*Inam—Service Inam—Alienation—Attachment of property in execution and sale—Legality of.*

An inam granted for the performance of Swasthivachakam service in a Hindu temple is not liable to be attached and sold in execution of a decree against the holder for the time being. The grant is one burdened with the performance of service of a public nature and the sale of such property is also opposed to the nature of the interest affected and is also contrary to public policy within S. 23, Contract Act. (*Schwabe, C.J. Coutts Trotter and Kumaraswami Sastri, JJ.*) NETI ANJANEYALU *v.* SRI VENUGOPAL RICE MILL, LTD., TENALI. **45 Mad 620=42 M L J. 477=15 L.W. 513=(1922) M.W.N. 307=30 M.L.T. 255=1922 Mad. 197 (F.B.)**

———*Inam—Enfranchisement—Title deed issued to widow—Absolute estate—Rights of reversioners.*

Where a service inam land is enfranchised in the name of a woman and the title deed in terms is an absolute grant of the land to her, she takes an absolute estate in the property and it descends to her own heirs as distinguished from those of the last male owner. 44 Mad. 643 P. C. foll. Where after the death of her minor son who held the office of Karnam, the mother was appointed to the office and the inam land was afterwards enfranchised in her name, her daughter's sons will succeed to the property in preference to the relations of her husband. (*Spencer and Devadass, JJ.*) ABDUKURI VENKATARAMADAS *v* PACHIGOLLA GAVARRAJU. **43 M.L J. 153=(1922) M.W.N. 305=31 M.L.T. 151 (H.C.)=16 L.W. 228=1922 Mad. 173.**

———*Inam—Enfranchisement—Karnam service—Title deed—Arrangements relating to—Effect.*

Imam title deeds do not create a title wher none existed before. They are not conclusive as to the title of the persons in whose favour enfranchisement is to operate, and it is open to the aggrieved parties to show that a name or names have been added by mistake. At the time of the enfranchisement of a karnam service inam, the office holder and his deputy entered into an agreement as a result of which the title deed was issued in the names of both : *Held*, both were estopped from contending that the title does not pass to the other. (*Spencer and Ramesam, JJ.*) TADIKONDA LAKSHMINARASIMHAM *v.* VENKATARATANAYAMMA. **30 M.L.T. 334 (H.C.).**

———*Inam—Lands attached to Temple pujari office—Adverse possession.*

Where lands attached to the office of *pujari* of a temple have been held by a person for more than 12 years as owner that person gets an absolute and indefeasible right thereto against all the succeeding office holders also. (*Sadasiva Iyer and Spencer, JJ.*) SUBRAMANIA GURUKKAL *v.* AMMAKANNU AMMAL. **14 L.W. 376=41 M.L.J. 450=70 I C. 477=(1921) M.W N. 696.**

———*Inam—Private grant—Presumption—Resumable grant—Nature of tenure.*

The rule that there is no presumption in favour of the restriction of an *inam* grant to

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the melwaram, is not confined to crown grants, but applies equally to grants by private individuals. The fact that an *inam* grant is resumable does not affect the character of the tenure created by the grantor or raise any presumption as to the existence of persons having an interest in the property prior to the grant. (*Oldfield*, J.) MALLAMPALLI PERAYYA *v.* VATCHARAYI VANKATAPATHI RAJU,
63 I.C. 804=18 L.W. 601.

———*Inam—Crown grants, construction of—Presumption—Minor Inams — Occupancy right—Onus of proof.*

A crown grant of an *Inam* in the absence of evidence one way or the other must be taken to be a grant of both the Melvaram and the Kudivaram. The two judgments of the Privy Council in *Suryanarayana* v. *Patanna*, 41 M. 1012 *and Venkata Sastrulu* v. *Sitaramudu*, 43 M. 166 do not expressly lay down a presumption that the grant is of both the Melvaram and the Kudivaram but such an initial presumption is deducible from the facts of those cases. In cases of minor inams of less than a village in extent the burden of proving the existence of occupancy rights is on the tenant who sets up such rights. (*Wallis*, C.J., *Coutts-Trotter and Ramesam*, JJ.) MUTHU GOUNDAN *v* PERUMAL AIYAR.
44 Mad. 588=40 M.L J. 429=13 L W. 483=(1921) M.W.N. 263=63 I.C. 790=29 M.L.T. 398 (F.B.).

———*Inam—Crown Grant—Presumption—Burden of proof.*

Where the Government, makes a grant of land at its absolute disposal, a third person cannot deprive the grantee's title on the ground that he was a landlord of the grantee and such third person's prior right as landlord is destroyed by the act of grant of the Government. There is no presumption of law that an inam grant of a village is *prima facie* a grant of the land revenue only. The terms of the grant, and whole circumstances connected therewith have to be looked into. In a suit for ejectment, the burden of proving that the tenancy is terminated and there is a ground for eviction lies on the plaintiff. (*Sadasiva Aiyar and Spencer*, JJ.) SUBBRAMANIA AIYAR *v.* ONNAPPA GOUNDAN.
12 L.W. 576=39 M.L.J. 629=61 I.C. 897=28 M.L.T. 389.

———*Inam—Effect of enfranchisement—Claim by divided members.*

Mere enfranchisement of service inam lands in the name of the office holder does not debar a divided member of the family of the office holder from claiming a share in the enfranchised lands. Exclusive possession of the inam lands by the office holder is not *per se* adverse, even against the divided members. 46 Cal. 362 has not overruled the decisions in 26 Mad. 330 and 30 Mad. 434. The divided member must prove that the inam lands were kept as undivided property at previous partitions and that he is a member of the original service holder's

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family, (*Ayling and Odgers*, JJ.) DEVULAPALLI VENKATA SUBBA RAO *v.* SATYANARAYANAMURTI. **60 I.C. 27=12 L.W. 642.**

———*Inam—Presumption—Grant of soil—Ashtabhogam incidents of.*

There is no presumption that an Inam grant is only of the melwaram. The determining factors are the terms of the grant and the circumstances connected therewith. A grant by the Maharajah of Mysore of lands with Ashtabhogam and Dasa Swamyom incidents conveys the soil to the grantee. (*Sadasiva Aiyar and Spencer*, JJ.) SUBRAMANIA AIYAR *v.* ONNPAPA GOUNDAN. **12 L.W. 577.**

———*Inam — Presumption — Land or revenue.*

There is no presumption that the land revenue alone was granted in the case of inams granted by the Zemindar prior to the permanent settlement. 41 M. 1012, Foll. (*Seshagiri Aiyar and Odgers*, JJ.) NANDIGAM SUBBARAYUDU *v.* KANNAM SAHEB **54 I.C. 22=(1919) M.W.N. 836.**

———*Inam—Enfranchisement — Office of karnam—Effect of.*

Where up to the time of the enfranchisement certain inam lands were annexed to the karnam's office and enjoyed by the holder of the office for the time being who was the only person who had any right to them, as a result of enfranchisement, the land which till then had been an endowment of a hereditary office, came to be held by the family which was entitled to the office. 30 Mad. 434, Ref. Having regard to the fact that the inam in question was karnam inam and to the annual payments made to the karnam for the time being and to the fact that the Shrotriemdars might have got into possession by some arrangement as to management, the onus was strongly upon the Shrotriemdars, to show that their possession was adverse and not permissive. The registered holders of the hereditary office of karnam can sue to recover possession of the inam lands after enfranchisement without joining other members of the family as parties. (*Wallis*, C.J. *and Spencer*, J.) ADDAGANTI CHINNA VENKATA SUBBA RAO NARASAMMA *v.* YEMANUR VENKATARAMAYYA.
53 I C. 161=10 L.W. 422.

———*Inam — Resumption — Mention of general charitable object—Illegal resumption by Government—Suit to recover property from Government—Limitation.*

Dharmadayam inams granted by the Crown for charitable objects on condition of certain services being performed by the trustees of a mosque cannot be resumed merely because the trustee has made a temporary alienation of the endowed properties, so long as the services mentioned in the deed of grant are substantially performed and the endowed property is not wholly lost to the charity. The order of resumption was a nullity as the contingency on which alone the Government was entitled to

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resume had not arisen, and that the object of the suit being to recover possession. Art. 144 and not Art. 14 of the Limitation Act applied. (Per *Abdul Rahim*, J.)—The doctrine of Cypres execution will be applicable to charitable inams where a general charitable object is mentioned in the grant. (*Abdur Rahim and Spencer*, JJ.) SECRETARY OF STATE *v.* GULAM MAHBOOB KHAN. **42 Mad. 673=37 M.L.J. 71= 9 L.W. 587=51 I.C. 363= (1919) M.W.N. 736.**

———*Inam—'Poromboke'—Right to communal property.*

The words 'besides Poramboke' in the grant of a whole village as *sarvamaniam* should be construed as excluding burning and burial grounds and other lands required for communal purposes. 24 M.L.J. 36; 37 M. 364, Rel. Such properties vest in the Government in trust for the community. (Per *Sadasiva Aiyer*, J.):—Meaning of 'Poramboke' discussed. The effect of the Uslam case (43 I.C. 98) is to vest river and channel beds in the Inamdar. (*Sadasiva Aiyar and Spencer*, JJ.) VENKATARAMA SIVAN *v.* SECRETARY OF STATE FOR INDIA. **36 M.L.J. 203=9 L.W. 381= 23 M.L.T. 232=50 I.C. 360= (1919) M.W.N. 191.**

———*Inam—Resumption—Charity—Rights of.*

Where the Government resumed an inam granted to a mosque by the Nawab of the Carnatic and imposed the full assessment for failure of the trustees of the mosque to carry out the trust and a patta was issued to the trustees but the lands themselves were not resumed. *Held*, that, as the grant was of both the land and the revenue, the ownership of the land was unaffected, and as it was subject to a charitable trust, it still continued to be so. 5 L.W. 402; 26 Mad. 330 and 30 Mad. 434, Foll. (*Ayling, Kumaraswami Sastri and Krishnan*, JJ.) MUHAMMED ESUF SAHEB *v.* SATHAR SAHIB. **42 Mad. 161=36 M.L.J. 262= 25 M.L.T. 141=49 I.C. 821= (1919) M.W.N. 228.**

———*Inam—Enfranchisement by Government—Right of other members to share.*

A person, who belongs to a family having a hereditary interest in a karnam's inam and becomes divided in status from the holder of the office for the time being, cannot, on enfranchisement of the inam subsequently, claim a share in the land attached to the office of karnam. (*Spencer and Krishnan*, JJ.) PYRAPPA *v.* SYAMA RAO. **25 M.L.T. 177= (1918) M.W.N. 819=49 I.C. 250= 8 L.W. 614.**

———*Inam—Rights of Inamdar—* Kudivaram *and* Melvaram, *distinction between.*

In an inam village having no occupancy tenants owned by an Inamdar who is also the Mirasidar, the distinction between *kudivaram* and *melvaram* has no place. A Mirasidar who

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gets *shrotriem* grant from Government can be said to be an Inamdar also. In a suit by trustees of temple as Inamdars against tenants the tenants must prove that the trustees had no *kudivaram* right. (*Sadasiva Aiyar and Napier*, JJ). NAINA PILLAI *v.* RAMANATHAN CHETTIYAR. **41 I.C. 788=33 M.L.J. 84.**

[Also 44 I.C. 895=34 M.L.J. 234.]

———*Inam—Resumption—Darimilla in a Zamindari—Lakhiraj lands—Exemption of—Government, if can resume inam—Enfranchisement.*

Darimilla inams, *i.e.*, inams granted subsequent to the Permanent Settlement cannot be resumed by Government. Lakhiraj lands are exempt from the payment of public revenue. Where a Zemindari in which the inam in suit was situated was resumed after the Permanent Settlement and regranted to the Zemindar subsequently in 1826 on the same peishoush and there was no ground to show the inam consisted only of lakhiraj lands which alone under the terms of the sanad granted in 1826 were excluded from the assets of the Zemindari. *Held*, that the enfranchisement of the inam by the Government was *ultra vires* and does not bind the Zemindar. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) VALLURI NARASIMHA RAO PANTULU GARU *v.* THE SECRETARY OF STATE FOR INDIA. **36 I.C. 219= 3 L.W. 573.**

———*Inam—Unenfranchised—Title by adverse possession in.*

If an inam grant for service is trespassed upon by a stranger before its enfranchisement and held adversely for the statutory period, the holder acquires a title to it, by prescription under S. 28 of the Limitation Act. 24 I.C. 501, Dist. (*Seshagiri Aiyar and Phillips*, JJ.) DINVAHI LAXMANPATI *v.* PINGALI NARSIMHAIN. **(1916) 1 M.W.N. 473=34 I.C. 898= 3 L.W. 590.**

———*Inam—Jeroyati—Meaning.*

The term 'Jaroyati' as used in parts of the Telugu districts means merely 'non-inam.' (*Sadasiva Aiyar and Moore*, JJ.) RAVU SESHAYYA GARU *v.* RAJA OF PITTAPUR. **3 L.W. 485=(1916) 1 M.W.N. 396= 31 I.C. 730=31 M.L.J. 214.**

———*Inam—Service—Whether a public charitable trust—Lease by some inamdars for 40 years—Remedy of others.*

An *Inam* granted on condition of the grantees providing water for the use of travellers passing through that place is not a public charitable trust and the leasing out of such an inam for 40 years by the minority of the Inamdars does not entitle an Inamdar who has not joined in the lease to sue for a declaration that the lease is absolutely void as a whole and that he was entitled to the possession of the whole inam. The only relief to which such an Inamdar entitled is a declaration that the lease

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is not binding on his share of the inam. (*Coutts Trotter and Moore*, JJ.) KUPPARAJU VENKATASUBBIAH *v.* MURUGULA SHEIK SILAR SAHIB. **19 M.L.T. 144=32 I.C. 947=8 L.W. 157.**

———*Inam—Enfranchisement—Service inam—Sale subsequently—Validity of—Enfranchisement—Effect of on rights of members of a joint family—Alienation—Subsequent enfranchisement.*

The sale of lands forming a *Barki* service inam, subsequent to its enfranchisement, is valid, even though made in pursuance of an agreement to sell entered into prior to the enfranchisement. An enfranchisement does not destroy the rights of any members of a joint family which has a hereditary interest in an inam. 26 M. 339, Foll. There is nothing in cl. 2 of S. 10 of Madras Act II of 1894 which affects the family title to lands which form the emoluments of an office. 8 M. 249, Ref. An alienation of a service inam is wholly void and the enfranchisement of the inam of later date does not entitle the alienee to invoke the aid of the provisions of S. 43 of the T.P. Act. 30 M. 255; (1913) M.W.N. 415 and 999, Foll. (*Spencer and Coutts-Trotter*, JJ.) KARRI RAMAYYA *v.* VILLORI JAGANADHAM.

39 Mad. 930=18 M.L.T. 360=2 L.W. 874=30 I.C. 889=(1915) M.W.N. 838.

———*Inam—Resumption—Darimilla inam—Gadaba Tirasti lands—Grant in lieu of wages—Jirayati mode of enjoyment—Enhancement of Kattubadi — Resumption — Ejectment suit—Onus—Civil Court.*

Darimilla inams are inams granted subsequent to the Permanent Settlement for doing personal service to the Zemindar in lieu of wages. Certain '*Gadaba Tirasti*' lands in the Vizagapatam District had been granted in inam subsequent to the Permanent Settlement for doing personal service to the Zemindar in lieu of wages. They had been once ordinary *Jirayati* lands at the time of the grant and the character of the enjoyment was not at any time lost or altered in the course of its devolution to the present occupants. The Zemindar sued to resume the lands and eject the tenants. *Held*, that the onus lay on the Zemindar to show a right to evict. Resumption is no more than a taking back of what was once given and does not necessarily imply dispossession from land. The acquiescence of Inamdars in the enhancement of the *Kattubadi* implied no more than a readiness on their part to accept a lower rate of remuneration for their services than they had been receiving originally. (*Spencer and Coutts-Trotter*, JJ.) IDUBILLI SIYYADDI *v.* SRI RAJA VISWESWRA NISSANKA.

30 I.C. 416=18 M.L.T. 142.

———*Inam—Right of inamdar—Poramboke.*

An Inamdar is by virtue of his Inam title-deed entitled to the unassessed waste lands in the village. (*Wallis* C.J. *and Coutts-Trotter*, J.)

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BALAKRISHNA RAO *v.* SECRETARY OF STATE. **39 Mad. 494=29 M.L.J. 276=18 M.L.T. 151=30 I.C. 355=2 L.W. 695.**

———*Inam—Presumption—Grant of melvaram—Applicability of a Civil Court.*

It is not the Revenue Courts alone but the Civil Courts also should presume that an inam grant is of the revenue only and not of land until the contrary is proved. 19 I. C. 440, Foll. (*Oldfield and Sadasiva Aiyar*, JJ.) GOVINDA REDDI *v.* RAVI KESAVALU NAIDU.

29 I.C. 1003.

[This is no longer law 41 Mad. 1012=43 Mad. 166 (P.C.)]

———*Inam—Resumption—Service inam—Title-deed in grantee's name—Services connected with the temple—Rights of temple.*

Where the inam title-deed was granted to a dancing woman for performing certain services in a temple and she subsequently alienated the inam and neglected the services, the trustees of the temple sued for possession of the inam. *Held*, that the suit by the trustees was not maintainable. The Government might if it chose resume the inam. 14 M. L. J 134, Ref. (*Miller and Sadasiva Aiyar*, JJ.) MATTE SARAYYA *v.* VEPPARATHI VYDYANATHAM.

1 L.W. 490=27 I.C. 163=27 M.L.J. 57.

———*Inam—Agraharam—Presumption.*

There is no presumption that a grantee of an *Agraharam* is not the owner of the Kudivaram at the time of the grant. (*Kumaraswami Sastri*, J.) RAMALA VENKATASWAMI *v.* KANUMALA NARASIMHAYYA.

26 I.C. 357=16 M.L.T. 596.

———*Inam—Presumption* — Sarvamaniam *and* Ashtabogam.

The words *Sarvamaniam* and *Ashtabogam* in a grant by a Zamindar merely means that there is no superior holder and that all the rights of the grantor are transferred. Such rights as communal rights and rights of occupancy must be presumed to have been excluded. The presumption is that the grant is of land revenue and not of the land itself. (*Sankaran Nair and Tyabji*, JJ.) PARANKUSA ZATINDRA MAHADESIKASWAMI *v.* SUBRAMANIA PILLAI.

26 I.C. 117.

———*Inam—Presumption.*

The presumption is that the land also, not merely the land revenue, is granted where there is no kudivaram interest at the date of the grant. 12 M. 98. Foll. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NANJUNDIAH *v.* VENKATA SUBBAYYA. **1 L.W. 670=16 M.L.T. 239=26 I.C. 87=27 M.L.J. 618.**

———*Inam—Resumption—Palanquin bearing service—Lands granted for.*

The rights of resumption of lands granted by a Zemindar for the performance of the private

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service of *Gadaha* or palanquin bearing to the Zemindar is in the latter and not in Government. (*Wallis*, C J. *and Kumaraswami Sastri*. J.) SATRACHERLA VEERABADHRA SURYANARAYANA *v.* SECRETARY OF STATE.
25 I.C. 878=1 L.W. 662.

———*Inam—Resumption — Temple trustees —Inam for reciting Vedas—Confirmation by Government—Resumption—Power of.*

Where an inam granted to *Vritikars* by a Zemindar is confirmed by Government it can be resumed by it alone and the Trustees of the temple have no right to take possession of the lands. (*Benson and Sundara Aiyar*, JJ.) TANGIRALA CHIRANJIVI *v.* RAJA MANIKYA RAO RAJYA. **26 I.C. 283=27 M.L.J. 179.**

———*Inam—Rights of Inamdar—Inamdar and lessees—Quit-rent increased by enfranchisement.*

Where an Inamdar holding the inam by leases for a fixed period gets it enfranchised for his own benefit the lessess are not liable for the consequent increase in the quit-rent. (*Sadasiva Aiyar*, J.) RAVEPATI RAMAYYA *v.* ADDANKI SESHAYYA. **23 I.C. 765.**

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Desai inams of Navalgund should be treated as property of ordinary Hindu land owner subject to payment to Government of agreed quit rent. (*Scott*, C.J. *and Heaton*, J.) BREADON *v.* SHRIMANT SUNDARABAI.
38 Bom. 272=23 I C. 221=16 Bom. L.R. 164.

———*Inam—Implies only grant of revenue—Where terms of title-deed are absolute right to minerals also is transferred—Right of Govt. to minerals will not be lost unless expressly given up—Enfranchisement does not impose any further liability than enhanced quit-rent fixed by Inam Commissioner.*

A grant made by the Government implies only grant of revenue if the terms of the grant do not expressly purport to transfer anything else. Where the terms of an *inam* title-deed are absolute and purport to convey the free-hold of a village, the right of the Government to the minerals in the village is also included in the grant. Even if the Government have often empressed different views about their right to minerals found in an Inam village, those views will not disentitle Government from asserting such right if they have not, by express words parted with it. Per *Sadasiva Aiyar*, J.—The effect of enfranchisement is that the full free-hold interest in a village passes and such estate is not liable to any further burden in the shape of Government revenue than that of enhanced quit-rent fixed by Inam Commissioner. (*Sadasiva Aiyar and Spencer*, JJ.) SECRETARY OF STATE *v.* SRINIVASACHARIAR. **23 I.C. 144=15 M.L.T. 277.**

———*Inam — Resumption— Pre-settlement inam—Right of Government.*

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Lands *held*, on condition of personal services to the Zemindar and in which the Government is not interested (*e.g.*, police or magisterial duties) could be included in fixing the peishoush of the Zemindari for they are not 'lands paying only favourable quit-rents under Reg. XXV of 1802.' The Government is therefore not entitled to resume such pre-settlement inams unless they prove they were excluded in fixing the peishoush. (*Sankaran Nair and Tyabji*, JJ.) SRI RAJA PARTHASARATHY APPARAO *v.* SECRETARY OF STATE.
38 Mad. 620=(1913) M.W.N 959=14 M.L T. 514=21 I.C. 871=26 M L.J. 39.

———*Inam—Darmilla inam—Resumption —Ejectment.*

An inam granted by a Zemindar to his servant for personal services is resumable whenever he chooses to dispense with his services. Where a Zemindar grants lands on favourable rent to his servant in consideration of personal service, mere dispensing with service does not give a right to the possession of the lands so long as the tenant is willing to pay the rent stipulated and to render the service. 23 M. 318; 20 M. 299; 1 M. 205; 21 M. 299, Rel. (*Ayling and Tyabji*, JJ.) KARUPMAYA ANANGA BHEEMA *v.* SONDI PRAHALADHA BISSOYI RAT.
14 M.L.T. 562=21 I C. 833=(1914) M.W.N. 179.

———*Inam—Enfranchisement—Liability of the Zemindar for assessment.*

If a pre-settlement *nottam* inam is enfranchised but cannot be localised in the Zemindari limits the Zemindar is not liable to additional assessment therefor. (*Benson and Sundara Aiyar*, JJ.) N. RAMA RAO *v.* SECRETARY OF STATE. **21 I.C. 49=(1913) M.W.N. 639.**

———*Inam—Presumption.*

In the case of inam land, the presumption is that the kudivaram was not vested in the Inamdar. (*Benson and Sundara Aiyar*, JJ.) SITAMRAJU RAMABRAHMAM *v.* M. LAKSHMANNA. **20 I.C. 843=25 M.L.J. 33=(1913) M.W.N. 771.**

[This is not correct. *See* 41 Mad. 1012 (P.C.)=43 Mad. 166 (P.C.)]

———*Inam—Presumption—Melwaram.*

An agraharam inam granted by a Nazvid Zamindar is presumed to be only of the melwaram right. (*Sankaran Nair and Tyabji*, JJ.) KANANDA NARSIMHA CHARYALU *v.* KAVICHERLA RAMA BRAMHAM. **24 M.L J. 656=20 I.C. 753=(1913) M.W.N. 774.**

[This is no longer law. 22 I C 339=41 Mad. 1012 (P.C.)]

———*Inam — Presumption — Melwaram—Burden of proof—Waste lands.*

An Inamdar in a suit for ejectment must show that both the melwarams are vested in him on the ground that he was in occupation

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when the inam was granted. It is immaterial whether the inam was granted by the Government or by a Zemindar. The presumption is that melwaram right alone was granted. The Inamdar if he can show that the lands were waste at the time of the grant will be entitled to the entire right in the property. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) YEDDMA PUDDI LAKSHMI NARASIMHA ROW *v.* REPALLI SITARAMASWAMI. **24 M.L J. 288= 19 I.C. 440=(1913) M.W.N. 282.**

[This is no longer correct. 41 Mad. 1012= 43 Mad. 166 (P.C.).]

———*Inam — Melwaram — Kudiwaram — —Rights—Holding of tope of trees—Powers of inam authorities.*

The rights of the melwaramdar and the kudiwaramdar are governed by the law applicable to landlord and tenant such as the Rent Recovery Act and it is not within the powers of the inam authorities to define such relations. When at the time of the inam grant of a melwaram right in any occupancy holding, the holding consisted entirely of a tope of trees, the melwaramdar has a right to the trees and the raiyat cannot cut them down for his own use. (*Benson and Sundara Aiyar*, JJ.) RAMA AIYANGAR *v.* JAGANNATHA PANDI AIYAR. **38 Mad. 155=24 M.L.J. 342= (1913 M.W.N. 216=18 I.C. 719= 13 M.L.T. 291.**

———*Inam—Poramboke—Right of grantee to river bed.*

To convey the bed of the river passing through lands granted in inam by Government it is not necessary that there should be an express grant of water in the stream. (*Sankaran Nair and Abdur Rahim*, JJ.) SECRETARY OF STATE *v.* AMBALAVANA PANDARA SANNADHI. **18 I.C. 294= 37 Mad, 369 (Note).**

———*Inam—Rights of holder—Extent of land under cultivation—Wet area.*

Under the terms of the inam deed the grantee was to pay quit-rent on a certain area which was only approximately estimated and he was free from all further charge and the extent was afterwards found to be greater and the Government levied from the Inamdar water cess for irrigation of this excess extent. *Held*, Government must be intended to be free from further charge besides quit-rent, all the area registered as wet land especially when only an approximate area was mentioned in the the title-deed. (*Miller and Sadasiva Aiyar*, JJ.) BOMMIREDDI PALLI VENKAYYA *v.* SECRETARY OF STATE. **18 I.C. 102= (1913) M.W.N. 858.**

———*Inam — Poramboke— Land between flood bank of river and river bed.*

The words ' besides Poramboke ' in an inam grant granting all cultivated dry and wet lands in the village area includes land formed between the flood banks of the river and its sandy river bed. All land not yielding revenue to Government is sometimes called poramboke; unassessed waste lands overgrown with trees or grass is always poramboke. (*Sankaran Nair and Sadasiva Aiyar*, JJ.) SECRETARY OF STATE *v.* RAGHUNATHA THATHACHARIAR. **38 Mad. 108=24 M.L J. 31= 18 I.C. 41=(1913) M.W.N. 261.**

———*Inam—Land or revenue— Melvaram and kudiwaram.*

A grant after describing the lands granted proceeds thus: ' Total of sixty *velies* of land including wet and dry lands, water, trees, stores, Nidhi Nirshapa Sidha Dadhya present and future Patti, all Bani and all Kajna with all Samudana with water from the land.' *Held*, that this was a grant only of the land revenue and, that a suit for declaration that the resumption of the same by Government was illegal, was barred by S. 4 of the Pensions Act. Government may grant kudiwaram to one person and the melwaram to another simply; similarly though both the kudiwaram and the melwaram may be combined in the hands of Government there is nothing to prevent it from treating them as distinct interests and granting them to the same person. Land revenue is not a servitude attaching to the land. The kudiwaram and melwaram are distinct interests constituting the totality of ownership in the land. The revenue is not a servitude on property which belongs to the kudiwaram holder. (*Benson and Sundara Aiyar*, JJ.) MUTHU SRI JIRJAMBA BAI SAHIB *v.* SECRETARY OF STATE. **23 M.L.J. 687=(1913) M.W.N. 255= 15 I.C. 871=12 M.L.T. 341.**

———*Inam—Poramboke—Right of grantee to channels and tanks.*

An inam title-deed contained the following words: ' I acknowledge your title to a personal inam consisting of the right to the Government revenue of land claimed to be.....acres situated in the village of L' and the words 'Besides poramboke' were inserted in the margin. *Held*, that the insertion of the words 'besides poramboke' need not necessarily be taken to be an acknowledgment by the Government of the inamdar's title to all kinds of poramboke. The effect to be given to those words depends on the evidence in each case and the circumstances attending the grant. 14 I.C. 261; 28 M. 539, Ref. to. Where the channels or tanks in the village granted were not connected with a Government source of irrigation and were not controlled by the Government to any appreciable extent, the said words had the effect of investing the property in the channels and tanks in the inamdar. (*Benson and Sundara Aiyar*, JJ.) THE SECRETARY OF STATE *v.* KANNAPALLI. **37 Mad. 364 (Note)=23 M.L.J. 109= 15 I.C. 894=(1912) M.W.N. 771.**

[Also 18 I.C. 294=37 Mad. 369 (Note)].

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———*Inam—Revenue — Exemption from—Onus—Acquisition for a Municipality—Transferee of Municipality—Inam land.*

Municipal Council acquired certain inam land under the Land Acquisition Act and by successive sales the plaintiff became the owner of it. *Held*, that when the land vested in the Government it became ordinary Government property liable to assessment in the hands of any person who might afterwards become its occupier. If the plaintiff claimed to hold the land free from the payment of assessment as the Government may fix, he must show some grant exempting him from the payment of the ordinary assessment. The Government order conferring an absolute property on all transferees from a Municipality simply removed all the objections to the transfer on the ground that the transferor is a Municipal Council and did not grant to such transferees exemption from payment of land revenue. (*Sundara Aiyar and Phillips*, JJ.) CHALLA PILLAI HANUMANULU PANTULU *v.* THE SECRETARY OF STATE. **36 Mad. 373 = 22 M.L.J. 448 = 15 I.C. 376 = 11 M.L.T. 207.**

———*Inam—Poramboke—Shrotriem tenure—'Besides poramboke'—Meaning of—Rights of grantee.*

A grant of Shrotriem tenure of certain villages on payment of quit-rents and containing a provision for resumption and also containing the words 'besides poramboke' does not give the grantee a right to river beds though they formed part of the original villages or even to all porambokes such as burning grounds, thrashing floors, public roads and rivers. A shrotriem grant in the Madras Presidency gives no right to the lands and so the grantee cannot interfere with the tenants so long as they pay the established rents. The object of the grant is to make provision for officials whose office is no longer necessary and only the income of the lands is granted. (*Benson and Bakewell*, JJ.) PAPALA NARAYANASWAMI NAIDU *v* PENSALANI KANNUIAPPA NAIDU. (1912) **M.W.N. 496 = 14 I.C. 261 = 24 M.L.J. 36.**

———*Inam—Presumption — Grant by Zemindar.*

Where an inam is granted by a Zemindar the presumption is that only the melwaram right is granted. (*Benson and Sundara Aiyar*, JJ.) GULLAPALLI BHADRAYYA *v.* GULLAPALLI VENKATARATNAM. **10 M.L.T. 54 = 11 I.C. 545 = 21 M.L.J. 803.**

[This is no longer law. See 43 Mad. 166 = 51 I.C. 304 (P.C.).

———*Inam—Estates in Berar — Fixity of rent—Enfranchisement—Berar Inam Rules.*

The devolution and incidents of an inam estate in Berar are regulated by the Berar Inam Rules, subject entirely to the sanad or certificate or other document evidencing the special terms of the grant in the paticular case. An Inam or grant may be entire or only partial. The mere fact that the same portion of the revenue which has been paid previous to the Inam enquiry has continued to be paid would not show that the jagir had been enfranchised and that it had become a freehold. Property consisting of an ordinary Inam village is liable to partition at the suit of a co-sharer, except when it is held on saranjam or other impartible tenure or where the terms of the original grant imposed a condition upon its enjoyment that the management should rest with a particular branch of the family of the grantee. (*Dhobley*, A.J.C.) KRISHNA RAO *v.* NILKANTH. **5 N.L.J. 23 = 18 N.L.R. 163 = 1922 Nag. 52.**

———*Inam in Berar—Alienation.*

An alienation by an *inamdar* holding the *inam* under R. 5 of the Berar Inam Rules, is not binding on his successor and a plea of adverse possession cannot be successfully raised against the successor of the alienor. (*Hallifax*, A.J.C.) MD. SIRAJ-UD-DIN *v.* FAYAZ-UD-DIN. **59 I.C. 473.**

Jagir.

———*Jagir — Resumable grants —Circumstances leading to the inference that grant is resumable—Service tenures—'Resumption'.*

Where the jagir was specifically mentioned as a service tenure involving the performance of police and other duties and the settlement with the Taluqdar showed that the rent was increased from Rs. 735 to Rs. 1,000, four villages were taken out of the Pargana and set apart for the maintenance of the widows of the previous holder and a new patta was granted to him by the Maharajah and a new Parvana was issued to him at the zemindar's instance for possession of the jagir: *Held*, in face of these facts it is idle to contend that the settlement with the taluqdar was a continuance of the old tenure. Had the talukdar succeeded to the jagir by right of inheritance, the maintenance of the Ranis, the widows, would have had no concern with it or the right to take away any part of the property to provide for their maintenance. The Maharaja's interference on behalf of the widows is explainable only on one hypothesis, that he was making a new arrangement by virtue of a right recognized by the authorities. "Resumption" in connection with these service tenures does not mean that on failure of the direct male line it "escheats to the Zemindar and becomes what is called his *Sir* or khas property; the jagir retains its character, but the Zemindar becomes entitled to make a new settlement with the knowledge and sanction of the authorities. (*Mr. Ameer Ali*). RAJA SRINATH RAY *v.* MAHARAJA PRATAP UDAI NATH SAHAI DEO. **33 M.L.T. (P.C.) 408 = 28 C.W.N. 145 = (1923) M.W.N. 702 = 1923 P.C. 217 (P.C.).**

———*Jagir—Life estate—Putra pautradi—Meaning of—Collateral heirs—Resumption, on failure of lineal male heirs—Chota Nagpur.*

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A jagir is to be taken *prima facie* an estate for life only though it might be granted in such terms as to be heritable. In order to make the estate one of inheritance, the terms making the grant must, if they are to be considered alone, be unambiguous and must clearly show whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. A village in Raj Ramgarh, Chota-Nagpur was granted as jagir, to be enjoyed by the grantee (the brother of the then Zemindar) *putrapoutradi*. The evidence in the case showed that succession to jagirs in the locality had always been in the male line of the grantee. *Held*, that the jagir was resumable by the descendants of the grantor upon failure of the grantee's male descendants. 7 C. 304 ; 24 C. 834, Dist. (*Sir John Edge.*) RAM NARAIN SINGH *v.* RAM SARAN LAL. **46 Cal. 683 = 29 C.L.J. 332 = 36 M.L.J. 314 = 17 A.L.J. 398 = 21 Bom. L.R. 597 = (1919) M.W.N. 318 = 50 I.C. 1 = 23 C.W.N. 866 (P.C.).**

[Reversing 42 Cal. 305 = 28 I.C. 610 = 19 C.W.N. 466.]

——*Jagir — Incidents of — Saranjam—Inam.*

A grant in jagir of the ordinary character implies no grant of the soil but a personal grant only of the revenue to the grantee. It is personal and not hereditary and is resumable at pleasure and being personal and temporary, is necessarily impartible. A custom of primogeniture would be radically inconsistent with the personal and non-transmissive character of a grant in jaghir. The term 'Saranjam' is the Marathi equivalent to the term jagir. The term 'inam' is one of more generic significance and is applicable to a Government grant as a whole and includes a Saranjam. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. **36 Bom. 639 = 39 I.A. 202 = 16 C.W.N. 1058 = 23 M.L.J. 383 = 12 M.L.T. 472 = (1912) M.W.N. 1140 = 14 Bom. L.R. 1226 = 16 I.C. 289 = 17 C.L.J. 17 (P.C.)**

——*Jagir—Jagirs by Native princes for Police services—Service tenure—Ejectment.*

In a suit for the ejectment of the Sarbarakar in certain mouzas in Zillah Kurdah, Orissa, the lands were found to be one of those jaghirs granted by Native princes for certain services and also paying certain light quit-rent. The service consisted in maintaining Paiks for performing Police and military duties. After confiscation by British Government these lands were treated as Khas Mahal and at the Settlements were resumed, though the Dalbehars (hereditary military chiefs) were engaged for the collection and payment of Government Revenue under the name of Sarbarakars. In 1861 the Government of Bengal made a grant of the village in which the suit jagir land was situate to the Mathadharis who thus became the owners of village free from the interference of the Government officials. The Mathadharis now claimed to have dismissed the defendant, who was in possession of some Sarbark jagirs in the village from service as if he were a mere servant or officer first of Government and then of Mathadharis. *Held*, that the Sarbarakars were something higher than mere servants and from 1861 were treated by Mathadhris as tenants and the defendants therefore could not be ejected. (*Chitty and Teunon*, JJ.) KRIPASINDHU ROY PITAM *v.* MOHUNT PARMANAND DAS GOSSAIN. **22 I.C. 359 = 18 C.W.N. 74.**

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——*Jagir—Incidents—Alienability—Liability to forfeiture—Inheritance—Course of descent.*

The term 'Jagir' does not necessarily imply a conditional grant and evidence that jagirs in a district are conditional and inalienable would not warrant the grant being regarded as conditional. In the case of a jagir created by a document its alienability and liability to forfeiture depend on the terms of the particular grant and not on those of grants made to others. (*Jenkins* C.J. *and Mookerjee*, J.) BHAGWAT BAKSH ROY *v.* SHEO PRASAD SHAHU. **18 C.L.J. 277 = 21 I.C. 481 = 18 C.W.**

——*Jagir—Funeral expenses, if a charge on income.*

Each new Jagirdar gets his Jagir free of claims in connection with his predecessor, and it is doubtful whether funeral expenses of the previous holder are a legal charge on the Jagir income. A declaratory decree in a favour of a Jagirdar who refused to pay funeral expenses was refused especially because he did not claim refund of expenses paid under order of Collector. (*Chevis*, J.) ASAD ALI *v.* MT. SHARIFUNNISSA. **1922 Lah. 365.**

——*Jagir—Meaning of—Punjab.*

In the Punjab the term 'Jagir' is ordinarily restricted to an assignment of land revenue and not of the land. Ordinarily Jagir is not land. (*Kensington and Rattigan*, JJ.) MAYA DAS *v.* GURDIT SINGH. **146 P.W.R. 1912 = 16 I.C. 853 = 167 P.L.R. 1912.**

——*Jagir—Inam—Distinction.*

Jagirs like inams were usually given for life, though in course of time they also became permanent and heritable. An inam was a present or gift either to an individual or for a public purpose, while jagirs generally involved conditions of service or a reward for service. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) SAM *v.* RAMALINGA MUDALIAR. **40 Mad. 664 = 34 I.C. 803 = 30 M.L.J. 600.**

——*Jagir—Berar Inam rules—Rules governing such grants.*

It is not the law that every grant of a Jagir whatever the circumstances under which it was made or the special conditions attached to it may be is governed absolutely by the Berar Inam Rules. The duty of the court in matters

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affecting a Jaghir is to ascertain the meaning and effect of the grant in each case from the circumstances and objects with which and the reliefs under which the same was granted. (*Hallifax and Prideaux*, A J C.) SUBBAN ALI *v.* IMAMI BEGAM. **1922 Nag. 129.**

———*Jagir—Berar.*

The Berar Inam Rules of 1859 modified to the extent stated in the Sanad Certificate in each case are applicable to every grant of Jagirs in Berar, whatever the circumstances under which it was made or the special conditions attached to it may be. In case of a grant which is merely a remission of the revenue, the actual benefit of the remission cannot be restricted to some only of the already existing owners of the proprietary interest or to particular heirs, and for that reason such a grant practically amounts to grant to all the existing shares and all their heirs during the continuance by the particular persons or the particular heirs to whom the grant is made. But where a grant of the proprietary interest is combined with a remission of the revenue there are no circumstances or vested interests, which compel the grantee to share the benefit of the grant with others, the devolutions as well as the duration of the whole estate are regulated by the operation of the terms of the grant. (*Hallifax and Predeaux*, A J.Cs.) MIR SUBHAN ALI *v.* IMAMI BEGAM. **4 N.L J. 192.**

———*Jagir—Incidents of—Heritability and transferability.*

A grant was obtained by a Prince from his father, the King of Oudh and after the annexation of Oudh, was maintained by British Government. A sanad was issued to Prince by Government as follows: 'It having been established after due inquiry that the Prince holds the undermentioned villages in rent free tenure under the former Government, the Chief Commissioner is pleased to maintain the tenure in property so long as there are lineal heirs... subject to conditions.' This grant was held to be a heritable and transferable estate lasting as long as the grantee had lineal descendants subject to the contingencies specified in the grant. (*Stuart and Kanhaiya Lal*, A.J Cs.) HUSAIN ALI MIZA *v.* MUHAMMAD AZIM KHAN. **31 I.C 728=18 O.C. 168.**

———*Jagir—Nature of tenure—Life estate—Assertion of higher right—Effect of.*

Jagirs are to be considered as life tenures only and with all other life tenures are to expire with the life of the grantee unless otherwise expressed in the grant. The mere assertion of a Jagirdari right acquiesced in by the superior landlord cannot be taken to import a claim to or an acknowledgment of a larger interest than that of life estate. 36 M.L.J. 347; 3 B. 186, followed. (*Miller*, C J. *and Jwala Prasad*, J.) MAHARAJAH PRATAB UDAI NATH SHA DEO *v.* GANESH NARAYAN SAHI. **70 I C. 232=1921 Pat. 369.**

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———*Jagir—Resumptian—Nature and effect of transfer of a portion—Onus of proof.*

Where a portion of the jagir has been sold and the transferees and persons claiming under them are in possession for generations, the onus of proving the existence of a right of resumption of the jagir by the descendants of the Jagirdar lies on the latter. (*Chamier*, C.J. *and Sharfuddin*, J.) RAMESWAR LAL BHAGAT *v.* GIRWARI PRASAD SINGH. **5 P.L.W. 316=43 I.C. 888=(1918) Pat. 156.**

———*Jagir—Tenure heritable and transferable—Execution sale*—Res judicata.

The Police jagirs in the Zamindari of Pachete are hereditary subject to the right of the Government to dismiss a *Jagirdar* and appoint if necessary even an outsider. When a police jagir was sold in execution of a decree and the succeeding jagirdar objected to the sale and the objection was overruled, and he then brought a suit which was dismissed, *held*, that his heir, the plaintiff, is barred by *res judicata* reason of the dismissal of the suit by his father. (*Mullick and Jwala Prasad*, JJ.) JADAB LAL SINGH *v.* DEBI LAL SINGH. **3 P.L W 149=2 P.L J. 725=42 I.C. 399=(1919) Pat 426.**

———*Jagir—Agreement between Zemindar and Jagirdar for commutation of customary dues.*

Under an agreement entered into by a Jagirdar with certain Zemindars holding permanent rights in the jagir land the Jagirdar agreed to accept certain rates in cash and kind in consideration of the customary dues he was entitled to receive as Jagirdar. The Jagirdar's son after his father's death brought a suit to avoid this agreement alleging that by the terms of the grant conferring the jagir a limited estate only was conveyed and therefore the grantee's rights to alienate were limited to his lifetime. *Held*, that the intention of the grantors was to confer hereditary estate in perpetuity without imposing any condition restricting alienation to make a permanent settlement; the plaintiff therefore was bound thereby. (*Crump and Kemp*, A.J.C.) MIR SHER MAHOMED *v.* JETHOMAL. **56 I.C 484=14 S.L.R. 1.**

Life Estate.

———*Life-estate—Hikim.*

According to a family custom the eldest son of the owner succeeded to the property as Raja and the second was the Hikim. A grant by the Hikim is operative during the life of the Raja only and not for the lifetime of the grantor or grantee. (*Mookerjee and Beachcroft*, JJ.) SRI SRI RADHA MADHAB NARAIN (DEB) HIKIM *v.* MILAN MAHATO. **21 I.C. 204=18 C.L.J. 23.**

Maintenance Grant.

———*Maintenance grant—Tivai grant—Custom of reverter on failure of made descendanst*

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of donee — Adoption by widow — Rights of adopted son.

In the Thakorate of Gamph a Hindu Rajput family in the Bombay Presidency, holding an impartible estate subject to the rule of primogeniture it was customary to grant villages to junior sons of the holder of the *gaddi* for Jivai or maintenance. The grant reverted to the *gadi* on failure of the grantees' male descendants, widows being excluded. One of such grantees died issueless leaving a widow who purported to adopt a son subsequently. *Held*, that the adopted son inherited the grant. (*Mr. Ameer Ali.*) PARTAP SINGH SHIVSINGH *v.* AGARSINGHJI RAISINGH. **43 Bom. 778 = 36 M.L J. 511 = 17 A.L.J. 522 = 21 Bom. L.R. 496 = 1 U.P.L R. (P.C.) 39 = (1919) M.W.N. 313 = 10 L.W. 339 = 50 I.C. 457 = 24 C.W.N. 57 (P.C.)**

[Reversing on appeal but not on this point 28 I.C. 529 = 17 Bom. L.R. 273.]

———*Maintenance grant—Rights of grantee and his heirs - Annuity — Right of collateral heirs—Charge on estate—Perpetuity—Liability of heirs of grantor.*

Where in settlement of the rights of a claimant to the Zemindari of Ramnad, the then Zemindarini and her heirs agreed to pay a specified annuity to the claimant and his heirs, (*santhathiparamparyamai*). *Held* on the construction of the document that the right to the annuity was not confined to lineal heirs of the grantee; that the annuity was a charge on the estate and not a covenant and was not obnoxious to the rule of law against perpetuities; and that the agreement was enforceable, against the estate in the hands of the Zemindarini's successors (*Lord Phillimore.*) RAJA RAJESHWAR DORAI *v.* SUNDARA PANDIAYASMID THEVAR. **42 Mad. 581 = 17 A.L.J. 153 = 36 M.L.J. 164 = 23 C W.N. 549 = 29 C.L.J 551 = 25 M.L.T. 400 = 21 Bom. L.R. 885 = (1919) M W.N. 511 = 49 I.C. 704 = 10 L.W. 322 (P C.)**

[Affirming 27 I.C. 283 = 27 M.L.J. 694.]

———*Maintenance grant* — Babuana *and Sohag grant—Incidents of—Dharbanga Raj—Custom of exclusion of widows — Effect of partition—'Auras putra poutradick'—Meaning of.*

The Dharbanga Raj is an impartible estate descending by primogeniture according to the custom of the family. The younger sons of the Maharaja are by family custom (*kulachar*) entitled by way of a *babuana* grant to the portion of the Raj estate for the maintenance of himself and his male descendants in the male line. Similarly the wife of the younger sons gets by way of sohag grant, the usufruct of a portion of the Raj estate for the maintenance of herself and her male descendants in the male line. In each case the property granted continues to form part of the Raj from which it is never separated and reverts to the Maharajah

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for the time being on the failure of male descendants in the male line of the grantee. Babuana and Sohag grants differ essentially from absolute grants and are subject to the *kulachar* (family custom) under which they are authorised and in accordance with which they are made. Widows and daughters and the descendants of daughters are by custom applying to such grants excluded from the succession. The fact that there was no evidence of the exclusion of a widow after a partition between the members of the joint family holding properties originally the subject of babuana and sohag grants would not prevent a logical extension of the kulachar to such a case and the custom excluding the widows would apply notwithstanding a partition. Babuana and Sohag grants descend in the family of Dharbanga Raj, not to the eldest male heir of the grantee, but to all the existing male heirs in the male line of the grantee as co-parceners. 36 I.A. 176, Dist. The words 'auras putra poutradik' in sanads evidencing babuana grants must be consistently with the custom excluding widows and not as general words of inheritance. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAWAASIM. **42 Cal. 882 = 41 I.A. 275 = 18 C.W.N. 1249 = 27 M.L.J 373 = 16 M.L T. 382 = 1 L.W. 863 = (1914) M.W.N. 807 = 12 A.L.J. 1217 = 21 C L.J. 9 = 25 I.C. 417 = 17 Bom. L.R. 18 (P.C.).**

[On appeal from 3 I.C. 207.]

———*Maintenance grant—Perpetual or life—Dauhi transha—Meaning.*

A rich and sonless Zemindar made a Mashhara bandegi-patra (maintenance grant) in favour of his daughter, providing that the daughter had been receiving a certain sum for her maintenance and other expenses and that unless some deed was executed objection might be raised in future to her getting the 'settled amount of maintenance' which was, therefore, made 'Kaim', (permanent) by the deed and that the daughter would get the same in '*dauhitransha*'. *Held*, that the grant was perpetual not limited to the life of the daughter's sons and that '*dauhitransha*' was intended to mean 'in the line of the daughter's son'. (*N.R. Chatterjee and Panton, JJ.*) RAJLAKHI DEBYA *v.* SAROTA SUNDRI DEBY. **56 I.C. 803**

———*Maintenance grant*—Khorposh—*Incidents of.*

Khorposh grants are heritable in the male line and determinable only on the failure of male heirs. The interest of a *Khorposhdar*, though more than an interest for life, be is nevertheless a limited interest, liable to be defeated at any time by the failure of heirs and therefore resumable by the proprietor for the time being. (*Chitty and Teunon, JJ.*) JAGANNATH MARWARI *a.* GIRIDHARI SINGHA. **29 I.C. 429 = 19 C.W.N. 102.**

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———*Maintenance grant*—Pachete Raj—*Customs.*

According to the family custom in the *Pachete Raj*, a maintenance grant to the members of the Raj is not absolute but lasts for the lifetime of the grantee and it is optional with the successor of the grantor to resume or confirm the grant. Where the holder of a *Pachete Raj*, after having granted to defendant certain villages for her maintenance, created a *putni* in favour of the predecessor of the plaintiff alleging resumption of the grant but in fact it was not resumed by his successor on his death, in a suit by a plaintiff to eject the defendant as trespasser. *Held*, that the suit was premature for want of title. (*Mookerjee and Beachcroft*, JJ.) CHOTA BAHIRA SAHEBA *v.* PURNA CHANDER CHANDPURI. **21 C.L.J. 144=27 I.C. 982=19 C.W.N. 1272.**

———*Maintenance grant—Dharbanga Raj—Babuana and Sohag Grants—Revenue and cesses—Liability to pay—Decree for revenue against holder—Sale of property*

The revenue and cesses in respect of the properties granted in the case of Babuana grants are to be paid by the grantee to the Raja. If the holder of the grant for the time being does not pay the revenue and cesses to the Raja he might sue to recover the same and if necessary, realise the same by the sale of the Babuana property and such a sale would effectually defeat the claims of all the members of the family entitled to maintenance out of the property. (*N. R. Chatterjee and Walmsley*, JJ.) HITENDRA SINGH *v.* MAHARAJA SIR RAMESHWAR SINGH BAHADUR. **22 I.C. 873=18 C.W.N. 42.**

———*Maintenance grants—Life estate—Presumption—Rebuttal—Alienability.*

Grants for maintenance are resumable *prima facie* on the death of the grantee. 23 A. 194; 22 W.R. 225, Foll. But this is not an inflexible rule and if property is vested in the grantee and his descendants by appropriate words creating an hereditary estate it is not cut down to a life estate and made inalienable because it is a maintenance grant. 9 M.I.A. 55; 3 B. 186; 4 C.L.J. 399; 4 A. 370, Ref. (*Mookerjee and Holmwood*, JJ.) SECRETARY OF STATE *v.* RASHIDUL HUQ. **21 I.C. 93=18 C.L.J. 31.**

———*Maintenance grant.*

Unenfranchised *inam* lands not granted for public or private services but for maintenance of the donee and his heirs, are capable of alienation as the alienation is not prohibited by law nor is it opposed to public policy and therefore the attachment and sale in execution of decree against the donee is not invalid. (*Sadasiva Aiyar and Coutts-Trotter*, JJ.) VENKATRAMA AIYAR *v.* CHANDRASEKARA AIYAR. **44 Mad. 632=40 M.L.J. 344=13 L.W. 383=62 I.C. 625=(1921) M.W.N. 204.**

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———*Maintenance grant—Permanent grant—Presumption—Payment for a long series of years.*

In cases where a maintenance grant is not forthcoming, the fact that payment has been made for successive generations may be taken as evidence from which a permanent heritable grant might be presumed. But in respect of the grant for life there is no analogy between a maintenance grant and the service grant. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SUGUTUR IMMEDY PEDDA CHIKKA *v.* SUGUTUR IMMEDY SAMBASADASIVA CHIKKA. **43 I.C 654.**

———*Maintenance grant—Succession.*

Where a grant of an inam was made as a subsistence grant to the ancestors of plaintiff's and the defendant's family it cannot be taken apart from the original inam grant, that it ceased so far as the plaintiff's family was concerned on the death of his adoptive father and that it only passed to lineal descendants and not to an adopted son. (*Benson and Sundara Aiyar*, JJ.) BOYANA PALLI *v.* POTHAPALLI. **12 I.C. 548=(1911) 2 M.W.N. 384.**

———*Maintenance grant—Construction of.*

A maintenance grant is *prima facie* for the life-time of the grantee or the grantor and the use of the word 'always' or 'for ever' does not *per se* create a heritable estate. (*Drake Brockman*, J.C.) MAHOMED ALI KHAN *v.* SHUJAT ALI KHAN. **46 I.C 913.**

———*Maintenance grant—Khasi—If heritable—Presumption.*

The presumption in the case of grants to a person as khasi is that it is for furnishing emoluments for the office of Khasi and the mere addition of the words 'for maintenance' cannot make it a heritable and divisible grant. (*Stanyon*, A.J.C.) MOHAMMAD JAFAR ALI *v.* MOHAMMAD TURB ALI. **46 I.C. 853.**

———*Maintenance grant—Dihdar, definition of.*

A dihdar was originally a person to whom a certain portion of the property was assigned by the vendee for his subsistence. (*Kanhaiya Lal*, A.J.C.) KISHUN *v.* SHYAM SUNDAR. **35 I.C. 441=19 O.C. 27.**

———*Maintenance grant—Life estate.*

Every document must be interpreted on its own terms not in the light of other documents which are differently worded. The mere fact that the object of the grant is the maintenance of the grantee would not retract from the absolute nature of the grant, if otherwise it gives full right to the grantee. The presumption that it is for a life estate prevails only when there are no words making it heritable and transferable. (*Piggott*, J.C.) MULLU *v.* RAGHUBAR SINGH. **18 I.C. 127.**

———*Maintenance grant—Rights of grantee—Rent and profits of estate—Accretion.*

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Where a Hindu wife is given possession of certain villages under a lease by her husband subject to the payment of rent to him, she has no estate in the villages but only a maintenance grant ; and the substance of the grant is that it is the rents, issues and profits that are alienated and not the immoveable properties out of which such rents, issues and profits arise which remain the property of the grantor and annexed to his estate The undisposed of accumulations of the wife cannot follow the "estate" because the title to the estate was never in the wife but always in her husband the grantor. In order that there may be an accretion there must be an estate to which the accumulations may accrete. (*Das and Adami*, JJ.) RAMESHWAR NARAIN SINGH *v.* RIKNATH KOERI. **67 I.C. 451=1923 P. 165.**

Minerals.

——*Minerals—Right of grantee—Presumption—Rent-free grant.*

Where a Zemindar granted in 1791 a Zemindari village as rent-free brahmottar land, the grantee 'to enjoy it comfortably by cultivating and getting the same cultivated by others' *held*, that the minerals underneath did not pass to the grantee. 37 I.A. 136 ; 24 C. 440 ; 36 I.A. 148 ; 39 I.A. 133 ; 44 I.A. 46, Rel. on. Where a grant is made by a Zemindar of a tenure at a fixed rent or rent-free, though the tenure may be permanent, heritable and transferable, minerals will not pass in the absence of express evidence to that effect. (*Sir John Edge.*) RAGHUNATH ROY *v.* RAJA OF JHERIA. **47 Cal. 95=46 I.A. 188= 17 A.L.J. 897=36 M.L.J. 660= 1 U.P.L.R (P.C.) 43=23 C.W.N. 914= 26 M.L.T. 76=30 C.L.J. 160= 21 Bom. L.R. 895=50 I.C 849= 10 L.W. 347 (P.C.) Also 28 I.C. 811=19 C.W.N. 875.**

——*Minerals—Inamdar—Right to.*

In the absence of an express grant of the right to quarry stones in the inam grant, the inamdar is not entitled to quarry stones free of payment of royalty to Government. The enfranchisement of the inam would not confer a greater right on the grantee than what he had under the original grant. The conduct of the Government at one time in paying compensation to the grantee for acquisition of such quarries would not estop the Government from claiming their rights. (*Sir Lawrence Jenkins.*) SECRETARY OF STATE *v.* SRINIVASACHARIAR. **40 M.L.J. 262= 18 L.W. 592=29 M.L.T. 181= (1921) M.W.N. 111=48 I.A. 56 (P.C.)**

[Reversing (*Abdur Rahim*, O.C.J., *Seshagiri Aiyar and Phillips*, JJ.) SECRETARY OF STATE *v.* SRINIVASACHARIAR. **40 Mad. 268=31 M.L.J. 483= 20 M.L.T. 323=5 L.W. 170= 39 I.C. 337=(1917) M.W.N 292. This itself was an appeal from 23 I.C. 144= 15 M.L.T. 277.**

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——*Minerals—Mokurrari lease—Rights of grantee—'Mai Hak Hakuk'* (*with all rights*) *—Meaning of.*

A Mokurrari lease by the Zemindar 'with all rights' (Mai hak hakuk) does not convey the right to the subjacent minerals in favour of the leseee. Even though a mokurrari lease is a permanent, heritable and transferable tenure, unless there is an express or plainly implied grant of subjacent minerals, they remain with the Zemindar. The expressions 'mai hak hakuk' do not increase the actual corpus of the subject affected by the puttah. In the absence of a specific provision to the contrary, it is an essential characteristic of a lease that the subject of it is one which is occupied and enjoyed and the corpus of which does not disappear by reason of the user. 37 I.A. 136 ; 39 I.A. 133 ; 44 I.A. 46, Rel. (*Lord Shaw*) GIRDHARI SINGH *v.* MEGHLAL PANDEY. **45 Cal. 57=22 M.L.T. 358=16 A.L.J. 851= 33 M.L.J. 687=3 Pat. L.W. 169= 26 C.L.J. 584=(1917) M.W.N. 232= 22 C.W.N. 201=7 L.W. 90=20 Bom. L.R. 64= 42 I.C. 651=44 I.A. 246 (P.C.)**

[On appeal from 34 Cal. 358= 5 C.L.J. 208=11 C.W.N. 527.

——*Minerals—Right of grantee—Proof—Rights to Zemindar—Permanent Settlement.*

Where a grant is made by a Zemindar of a tenure at a fixed rent although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect. 37 I.A. 136 ; 39 I.A. 133, Rel. A talabi brahmottar grant of a mouzah by a Zemindar prior to 1790 did not carry with it mineral rights. (*Lord Buckmaster*). SASHI BHUSHAN MISRA *v.* JYOTI PRASHAD SINGH DEO. **44 Cal. 585=1 Pat. L.W. 361= 21 C.W.N. 377=16 A.L.J. 209= 32 M.L.J. 245=(1917) M.W.N. 226= 25 C.L.J. 265=21 M.L.T. 203= 19 Bom. L.R. 416=6 L.W. 2= 40 I.C. 139=44 I.A. 46 (P.C.).**

[See also 50 I.C. 849=47 Cal. 95 (P.C.). 42 I.C. 651=45 Cal. 87 (P.C.). 6 I.C. 788=37 I.A. 136 (P.C.). 15 I.C. 219=39 I.A. 133 (P.C.).

[On appeal from 38 Cal. 815= 12 I.C. 482=14 C.L.J. 361=16 C.W.N. 241.

——*Minerals—Right—Khorposh grants.*

A *khorposh* grant for the maintenance of the junior members of the family of a Zemindar does not carry with it a right to the sub-soil minerals. (*Chitty and Teunon*, JJ.) JAGANNATH MARWARI *v.* GIRIDHARI SINGHA. **29 I.C. 429=19 C.W.N. 102.**

——*Minerals—Right to, when passes—Maintenance grant.*

Where a deed of grant is one for maintenance for the life of the grantee and does not contain any express provision authorising the grantee to open new mines and use the minerals

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thereof, the grantee has no right to grant a mining lease for the purpose of opening and working new mines. (*Mookerjee and Beachcroft*, JJ.) F.F. CHRISTIAN *v.* TEKAITNI NARBADA KOERI. **20 C.L J 527 = 27 I.C. 471 = 19 C.W.N. 796.**

———*—Minerals—Mines unopened at date of grant—Right in.*

A Mogloi *Brahmottar* grant more than 100 years old, even though permanent, does not pass the mines, unopened at the date of the grant. 37 C. 723, P.C.; 38 C 845; 39 C. 696, P. C., Foll.; 1 C. 391, P.C., Dist. (*Fletcher and Richardson*, JJ.) KANJA BEHARI SEAL *v.* RAJA DURGA PRASAD SINGH. **42 Cal. 346 = 20 C.L.J. 301 = 26 I C. 819 = 19 C.W.N. 203.**

———*Minerals — Zemindari* — Nimak Sayahar Mahal—*Rights of grantee to enter on land.*

A grant carries with it the means reasonably necessary for its enjoyment and the grantee of a *nimak sayahar mahal* is entitled to enter on the land of the Zemindari to dig for saltpetre. He is not merely the grantee of the revenue on saltpetre manufactured by others. (*Jenkins*, C J. *and Mookerjee*, J.) GOPAL CHAND *v.* JANKI KUAR. **41 Cal. 286 = 18 C.L J. 151 = 20 I.C. 650 = 17 C.W.N. 1195.**

———*—Minerals—Patni.*

Under a patni, the Patnidar got all the rights previously exercised by the Zemindar. The patnidar was to hold and enjoy all the lands of the mahals with 'all zemindari rights whatsoever.' *Held*, that mining rights were granted with the patni to the patnidar. (*Prinsep and Hill*, JJ.) ALLI QUADEER *v.* JOGENDRA NARAIN. **16 I.C. 411 = 16 C.L.J. 7.**

———*—Minerals—Grant by Zemindar—Subsoil rights.*

A grant, by a Zemindar, of a tenure in lands within his zemindari does not pass the minerals unless it appears clearly from the terms of the grant that the minerals were included in the grant. 47 C. 25 P.C. Foll. (*Miller*, C.J. *and Coutts*, J.) KUMAR PRAMATH NATHA MALLIA *v.* MEIK. **3 Pat. L.J. 273 = (1920) Pat. 146 = 56 I.C. 184 = 1 Pat. L.T. 360 [Also 57 I.C. 786 = 1 Pat. L.T. 563.]**

———*—Minerals—Khorposh—Right to subsoil—Power to admit such rights of Zamindar hose estate is under Encumbered Estates Act.*

Prima facie Khorposhdars are mere maintenance holders having no right to grant leases of sub-soil rights in the khorposh village to others. A Zemindar whose estate is under the Chota Nagpur Encumbered Estates Act cannot execute a document admitting that the Khorposhdars have right to the sub-soil of the Khorposh lands. (*Chamier*, C J., *and Jwala Prasad*, J.) SATYA CHARAN SRIMANI *v.* DINA NATH GORAIN. **42 I C. 823 = (1917) Pat. 237.**

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——*——Minerals—Mines—Principles governing rights of grantor and grantee.*

When the sub-soil is not expressly granted, a permanent tenure, though hereditary, does not include in it the enjoyment of the mineral rights; and in the case of the grantor having both the ownership and the right of property in the surface and the sub-soil prior to the date of the grant of the land, severance of the surface rights from the property in the sub-soil is presumed at the time of the grant, the grantor's rights being analogous to those of a fee simple free-hold owner in England. This presumption gives the grantor a right to enter on the land for exercising his rights in the sub-soil which are deemed to be reserved to him. The principles of free-hold, and not of copy-hold should govern the case, as under the former system there is no deadlock as there is under the latter, when no reservation or custom is proved. A Court can by injunction prevent damage by the grantor or his assignees in working the mines. 37 C. 723, P.C., 39 C. 696, P.C. Ref. to; 45 L.J. Ch. 699, Dis. *Atkinson and Kingsford*, JJ.) NAWAGARH COAL CO., LTD. *v.* BEHARI LAL. **20 C.W.N. 1135 = 1 P. L J. 275 = 37 I.C. 480 = 2 P. L.W. 324.**

Palayom.

———*—Palayom—Service tenure—Enfranchisement.*

Where a palayom is granted on service tenure, it is inalienable so long as the liability to render service subsists. As soon as the services are abolished the lands become alienable and heritable like ordinary property though a sannad fixing the peishoush has not been issued. (*Ayling and Seshagiri Aiyar*, JJ.) KRISHNA AIYAR *v.* SWAMINATHA AIYAR. **8 L.W. 140 = 24 M.L.T. 101 = 47 I.C. 728 = (1918) M.W.N. 503.**

Resumption.

——*——Resumption—Services.*

Grant of land for services rendered and to be rendered cannot be resumed by the grantor either on discontinuance or after they are no longer required. (*Batchelor*, A.C.J. *and Shah*, J.) BASLINGAPPA *v.* CHANDRAPPA. **35 I.C. 860 = 18 Bom. L.R. 695.**

———*—Resumption—Service grant.*

Where there is a grant of land burdened with duty or service, the duty or service being the sole motive and condition of the grant, on failure or refusal to perform the duty or service the land is resumable. Where an hereditary office is created, and bestowed hereditarily upon a person's family from generation to generation and lands are assigned as remuneration therefor and the lands so granted are not resumable. (*Beaman and Rao*, JJ.) MUDHVACHARYA RAMCHANDRA CHARYA *v.* SHRIDHAR NARSIMHA BHAT. **37 Bom. 409 = 19 I.C. 876 = 15 Bom. L.R. 357.**

GRANT—Resumption.

———*—Resumption—Grant by Government—Right to resume for Government purposes—Resumption by Government and sale to private individual.*

Under a kabuliyat, the occupancy of certain land was granted to A by the Collector subject only to the condition that it should be competent to Government to resume the land whenever it should be required by Government for Railway, or other purposes. Subsequently the Government resumed the land and sold it to B, a descendant of the person from whom the Government had acquired the land. *Held* (1) that the Government remained the proprietors of the land and could deal with the land in any way they pleased like any private owner; (2) that the Government as proprietors of the land could resume it when they required it for their proprietary purposes. Government purposes must be construed as meaning that they were purposes of Government as the state proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary power. (*Chandavarkar and Batchelor*, JJ.) SABRLO SALESHETTI *v.* SECRETARY OF STATE FOR INDIA.
36 Bom. 438=15 I.C. 782=
14 Bom. L.R. 414.

———*—Resumption—Nankar grant—Grantee willing to perform service—Right of grantor to determine the tenure—Ejectment.*

Where grant of land in nankar is subject to burden of service and not merely in lieu of wages, the grantor cannot put an end to the tenure, whether the services are performed or not, so long as the grantee is willing and able to perform the services; and he cannot be ejected. (*Holmwood and Chapman*, JJ.) JOGENDRA NARAIN SARKAR *v.* RAMACHANDRA ADHIKARI. **23 I.C. 300.**

———*—Resumption—Muafi.*

Where a muafi is resumed and a settlement is thereafter made the action of the settlement authority does not affect the position of the settlee with regard to the property. (*Kensington*, C.J. *and Rattigan*, J.) KISHEN DEVI *v.* SHIB SARAN. **77 P.R. 1914=25 I.C. 697=**
217 P.L.R. 1915.

———*—Resumption — Rights of occupancy tenants.*

Where an inam is resumed by Govt. and ryotwari pattas are granted to the Inamdars, the rights of the occupancy tenants in the inam are not affected and they cannot be ejected thereunder. In exercising the right of resumption, as against a part owner, the rights of other part owner should not be disturbed. (*Ayling and Seshagiri Aiyar*, JJ.) ELAVARTI VENKATAPPACHARYULU *v.* TIRUMALAREDDI PAPIREDDI. **44 Mad. 550=**
62 I.C. 309=13 L.W. 203.

———*—Resumption—Effect on tenants.*

Where Government resumes an Inam and a ryotwari patta issued to the inamdar and it did not appear that the tenant on the land had at the time of resumption acquired permanent rights of occupancy either by grant, contract or prescription, the inamdar is entitled to eject the tenant. Per *Sadasiva Aiyar*, J.—Even if the tenants had obtained occupancy rights by prescription or grant from the inamdar, the resumption by the Government put an end to the inam grant and the subordinate titles of the tenant under the inamdar. The new title acquired by the Inamdar by the grant to him of a ryotwari patta by the Government after resumption could not be effected by those subordinate rights available against him only if the old title as inamdar continued. (*Sadasiva Aiyar and Spencer*, JJ.) SUBRAHMANIA AIYAR *v.* ONNAPPA GOUNDAN.
12 L.W. 877.

———*—Resumption—Right of Government—Decision of Inam Commissioner.*

The Government has no right to resume inams included in the assets of a Zemindari at the time of the Permanent Settlement. If the Inam Commissioner passes enfranchisement proceedings with regard to them, he would be acting *ultra vires*. (*Seshagiri Aiyar and Burn*, JJ.) MANNA SULTAN *v.* SECRETARY OF STATE. **10 L.W. 372=26 M.L.T. 265=**
53 I.C. 332=37 M.L.J. 661.

———*Resumption — Charitable inam—Resumption and enfranchisement—Incidents of.*

In the case of resumption of inam of a trust the land becomes the property of person to whom it is granted by Government as a ryotwari tenure though the grantee may be a former trustee. 26 M. 339; 30 M. 434, Dist. In the case of enfranchisement of inam there is a change in the tenure and not in the ownership. (*Oldfield and Phillips*, JJ.) DEVI PUNNIAH *v.* GORUNTLA KOTAMMA. **40 Mad. 939=**
38 I.C. 237=5 L.W. 167.

———*—Resumption—Rights of grantee.*

The grantee of a favour or indulgence can make no claim against his grantor that the thing should be treated as irrevocable unless he can invoke the doctrine of estoppel in his favour. (*Sadasiva Aiyar and Napier*, JJ.) KATHALI MICHAEL PILLAI *v.* J.M. BARTHI.
39 Mad. 1056=19 M.L.T. 249=
30 M.L.J. 423=3 L.W. 348=
34 I.C. 557=(1916) 1 M.W.N. 307.

———*—Resumption—Service Inam—Grant by Zemindar—Whether resumable.*

Per *Seshagiri Aiyer and Phillips*, JJ. *contra Wallis*, C.J.) A grant burdened with service is not resumable so long as the grantee is willing to perform the service. The presumption in Government grants that the lands granted as service inams are resumable does not necessarily apply to grants by Zemindars. (*Wallis*, C.J., *Seshagiri Aiyar and Phillips*, JJ.) KAMARAVATU MRUTYNJYADU *v.* RAJA OF PITTAPURAM. **30 M.L.J. 132=**
33 I.C. 901=(1916) 1 M.W.N. 279.
[On appeal from 26 I.C. 78=
(1914) M.W.N. 936.]

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——*Resumption—Darmilla—Meaning of—Resumable—Where service not required—Considerations of so many things—Nature of tenure—How decided—The burden of proving that it is not resumable is in grantee.*

Where the grant is made for "Nakesh" the grant is more or less a Darmilla grant that is a grant subsequent to Permanent Settlement. Such grant is resumable by the grantor when such service is no longer required. In the following circumstances the grant of a certain land as inam is resumable when the services are no longer required. If the grant is made (1) In consideration of past services done, (2) providing that the grantee was to enjoy from son to grandson and so on in succession, (3) with a condition of payment of Kattubadi at Rs. 3 per annum, (4) for a service which is Nakesh or personal. The question whether the grant is resumable or not has to be decided on a consideration of all the circumstances appearing in the evidence, including the nature of the service, the terms of the grant, the question whether the service is attached to any officer known by any particular designation and so on. The nature of a tenure has to be decided upon the evidence in each case and in the case of a grant subsequent to the Permanent Settlement to which services of a personal as opposed to public character are attached, the burden of proving that it is not resumable is on the grantee. Even in the case of the grant of an estate burdened with a certain service, though the zemindar is not ordinarily entitled to resume he is so entitled if in the grant itself appropriate terms are introduced giving the grantor a right to resume the lands on the non-fulfilment of certain conditions. (*Ayling and Sadasiva Ayyar*, JJ.) KAMARAVUTHU MRUTYUNJAYUDU *v.* RAVU VENKATA KUMAR MAHIPATHI. **26 I.C. 78 = (1914) M.W.N. 936.**

——*Resumption—Service and office grant.*

There is a distinction between the grant of an estate burdened with service and the grant of an office the duties of which are compensated by the use of certain land. A grant burdened with service cannot be resumed, merely because the necessity for the service is over, though it may be forfeited for wilful failure in the service. The other class of grants are resumable. The Zemindar can resume where a service grant is included in the *mal* assets of a Zemindari at the Permanent Settlement. A tenure has to be decided upon the evidence in each case. A grantee must show that a grant subsequent to the Permanent Settlement to which services personal as opposed to public are attached is not resumable. (*White*, C.J. *and Phillips*, J.) VADISAPU APPANDERA *v.* VYRICHERLA VEERABHADRARAJU.
10 M.L.T. 391 = 12 I.C. 487 = (1911) 2 M.W.N. 406.

——*Resumption—Transferability.*

A resumable grant is not transferable. A marwat grant is not transferable although it is not resumable. (*Simpson*, A.J.C.) SIYA RAM *v.* SALIK. **10 O.L.J. 835 = 5 L.R. Oudh 13 = 1924 Oudh 124.**

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——*Resumption—Service grant.*

No suit lies for resumption of a service grant in the absence of any allegation of specific service. (*Holms*, S. M.) MUHAMMAD ALI MUHAMMAD *v.* SHAUKATALI. **34 I.C. 715 = 3 O.L.J. 231.**

——*Resumption—Effect of.*

The object of the Government in Bengal in the resumption proceedings was not to resume the lands and to re-settle the lands with the persons who originally held them. The resumption was not of the land but of the revenue and resumption meant nothing more than assessing the land to Government revenue. (*Das and Bucknill*, JJ.) MAHANT RAMRUP GIR *v.* LAL CHAND MARWARI.
1 P. 473 = 3 P.L.T. 352 = 1922 P. 243.

Rights of Grantee.

——*Rights of grantee—Grant of land bounded by stream—Partition grant.*

Where land is bounded by a stream is granted the grantee gets the bed of the stream up to the middle point. The grant, however, may contain reservations. This construction applies to a grant in partition just as to any other grant. A grant is usually construed in favour of the grantee rather than of the grantor. Hence, where an agreement for partition was entered into between owners of lands bounded by a stream, and the plaintiff claimed thereunder all the land on the southern side of the river and the bed of the river up to the middle point, and the exclusive right of fishing at those points, and the only reservation which the agreement showed was about the use of wells, tanks and water-courses; *held*, that the plaintiff could get the bed of the river up to the middle point together with the right of fishing. (*Richards*, C.J. *and Sundar Lal*, J.) POWELL *v.* POWELL. **36 I.C. 557 = 14 A.L.J. 684.**

——*Rights of grantee—Partibility.*

The ordinary rule is that if persons are entitled beneficially to shares in an estate, they may have a partition except when the estate is held on an impartible tenure or where the terms of the grant impose a condition upon its enjoyment that the management should rest with a particular branch of the family of the grantees. Incidents of *Saranjam* considered. (*Dhobley*, A. J. C.) KRISHNAJI *v.* NILAKANTH. **18 N.L.R. 163 = 5 N.L.J. 25 = 1922 Nag. 52.**

——*Rights of grantee—Accretions—Right to.*

The question whether property subsequently acquired by the grantee is to be considered a portion of the grant depends on the proof of

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the intention to incorporate it with the grant. (*Stuart and Kanhaiya Lal*, A J.Cs.) MAHAMMAD ABDUL RAQUIB KHAN *v.* SALAMAT BIBI. **25 I.C. 680 = 1 O.L.J 397.**

———*Rights of grantee—Digwari grant.*

A *Digwar* cannot transfer the lands comprised in his grant, to another nor can he himself acquire any interest in the uncultivated land. (*Miller*, C.J. *and Ross*, J.) BAIDYANATH MAHTO *v.* SHYAN MAHTO. **59 I.C. 899.**

Ryotwari Patta.

———*Ryotwari patta—Effect of.*

Grant of patta to a Mirasidar by Government does not destroy occupancy rights that may exist at the time of the grant. (*Benson and Sundara Aiyar*, JJ.) VENKATACHALA GOUNDAN *v.* RANGRATNAM AIYAR. **13 M.L T. 450 = (1913) M.W.N. 434 = 20 I.C. 874 = 24 M.L.J. 571.**

[Affirmed by 56 I.C. 117 = 43 Mad. 567 (P.C.)]

Sankalp.

———*Sankalp—Under-proprietary halding.*

A sankalp is a grant but it may be grant of a leasehold of a non-transferable tenure not liable to termination at the will of the grantor or on the happening of any contingency. The former invests the sankalp holder with the status of a mere privileged lessee and the latter makes him an under-proprietor. (*Kanhaiya Lal*, J.C.) JANKI *v.* GANGA PAL **53 I C. 974.**

Saranjam.

———*Saranjam—Presumption.*

A grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the Royal share of the revenue only. There is no presumption that a grant of Saranjam is a grant of Royal revenue only. It must be determined in each case upon the facts what was the quality of the original grant although it may be that it is ordinarily a grant of the Royal revenue only. It was plain that the original grant was made in respect of political services; but there was nothing in any of the documents produced which suggested that all that the grant was intended to give to the grantees was a lease from payment of the royal share of the revenue. On the contrary in one of the early documents founded on the grant, mention was made expressly of the Kasba Hebli (subject of the grant) with its hamlets and Wathhoi, with the Mahal Jukath and Mokassa " with the whole of the dues and cesses and hidden treasures, exclusive however of the dues of Hackdars and Inamdars " and the language of the other documents was in similar terms. It was significant also that in the deed of partition executed by the grandfather of the plaintiff in 1879 the property partitioned was described as the Jaghir villages of Kasbe Hebli and Majre Watanhal

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and the Mouza of Talvai and Kurdapur obtained from the British Government." Throughout the documents there was no suggestion that what was conveyed was merely the Royal share of the land revenue of the lands was conveyed to the grantees and the amount of the *nazarana* which had been levied from time to time appeared to have been based on the yearly revenue of the estate, " there being no suggestion that the revenue derived by the holder as occupant " was distinct from the Saranjamdar was not liable to Nazarana. *Held*: All these considerations are sufficient to justify the inference that the original grant was a grant of the soil. (*Lord Salvesen*). THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* LAXMI BAI. **47 Bom. 327 = 44 M L.J. 471 = 28 C.W N. 49 = 17 L.W. 405 = 32 M.L.T. (P.C.) 111 = 37 C.L J. 461 = 25 Bom. L.R. 527 = 50 I.A. 49 = 1923 P.C. 6 (P.C.).**

———*Saranjam—Grant of Miras rights by Saranjamdar—If binding on his successors.*

A grant of Miras rights by a Saranjamdar is binding on his successors when the Saran'am descends by inheritance, (*Shah and Crump*, JJ.) SAKHARAM GOPAL PAGE *v.* TRIMBAK RAO RAMACHANDRA. **23 Bom. L.R. 314 = 61 I.C. 40 = 48 B. 694.**

———*Saranjam—Construction of.*

Saranjam or jagir (the terms being convertible), ordinarily means the grant of the royal share of the revenue and not of the soil and the person alleging a grant of soil must prove it. In the case of an inam where the grant is merely of the royal share of the revenue and not of the soil, resumption means only the discontinuance of exemption from payment of land revenue and interference with actual occupation is not allowable. In the case of jagir involving grants of the soil as well as of the royal share of the land revenue the words 'resumption' and 'assessment' mean two different things. A Saranjamdar may acquire occupancy rights which remain unaffected by the resumption of saranjam except as to assessment thereafter payable to the Government. Government can resume the royal share of land revenue but subject to the right to occupation of the saramjandar. (*Batchelor and Shah*, JJ.) GURURAO *v.* SECY. OF STATE. **41 Bom. 408 = 39 I C. 65 = 19 Bom. L.R. 117.**

Service Grant.

———*Service grants* — Karnam *Lands—Nature of title—Enfranchisement, effect of.*

The *Karnam* of a village holds his office not by hereditary or family right but as personal appointee, though the appointment in certain cases, are exercised by members of a particular family. The lands which form the emoluments of the office do not become the family property and they are inalienable and designed to be the emolument of the officer into whose hands, the office passes. The effect of enfranchisement is

to free the lands from their inalienable nature and to empower the Government to deal with them as they pleased. The law applicable to the enfranchisement of Palayams cannot be applied to the case of a karnam office. (*Lord Buckmaster, Lord Dunedin, Lord Shaw and Sir John Edge.*) VENKATA JAGANNATH *v.* VEERABHADRAYYA. **44 Mad. 463 = 48 I A. 244 = 34 C L J 16 = 14 L W. 59 = 41 M.L.J. 1 = 61 I C. 667 = (1921) M.W.N. 401 (P.C).**

———*Service grant—Lands remaining long in a family and descending by primogeniture.*

Service land is usually inalienable and evidence that it had remained for a long period in a family and descended by rule of primogeniture is more consistent with its being held for service than under any special family custom. If the service comes to an end the last holder in the absence of any sons or co-sharers can put an end to any tenure based on family custom. (*Scott*, C.J. *and Heaton*, J). BRENDON *v.* SHRIMANT SUNDERABAI. **38 Bom. 272 = 23 I.C. 221 = 16 Bom. L.R. 164.**

———*Service grant—Grant in favour of menial servant—Servant whether trustee—Resumption.*

Where a temple menial servant holds no office of a hereditary character and he is remunerated for his duties by the use of certain lands, the lands cannot be held to be burdened with any service in connection with the temple, and the holder is not a trustee, and after cessation of his service, the land is liable to be resumed immediately. (*Choudhuri and Cuming*, JJ.) JOYNATH SARKAR *v.* HARI MOHAN DAS. **59 I.C. 469.**

———*Service grant—Delegation—Validity.*

The rights of a Saunjibdar will be lost by him if he performs his duties by a representative. (*Rattigan*, J.) FAQIRIA *v.* SOBHA. **9 I.C. 925 = 18 P.W.R. 1911.**

———*Service grant—Religious office.*

In the case of a grant for upkeep of mosque and performance of religious services therein the grantee is not bound to account for disposal of income so long as services are performed. (*Spencer and Ramesam*, JJ.) MOHAMED HUSSAIN *v.* ABDUL RAHIM BEG. **(1922) M.W.N. 74 = 42 M L.J. 272 = 16 L.W. 241 = 1922 Mad. 8.**

———*Service grant—Grant burdened with service—Nakesh.*

Where the grant is of this nature "so long as the holders of those grants are willing and able to perform the services the zemindar has no right to put an end to the tenure whether the services are required or not." There is no authority for holding that the nature of services makes any difference in the case of such a grant: though in the case of service grant where lands are enjoyed in lieu of wages, the power of arbitrary resumption would largely turn on whether the

services were private or public. When the service performed by the grantee is of a private nature and personal to the grantor and not of public nature or an obligation of a feudal character it is styled as "Nakesh". (*Ayling and Sadasiva Aiyar*, JJ.) KAMARVUTHU MRUTYUNJAYUDU *v.* RAVU VENKATA KUMAR MAHIPATHI. **26 I.C. 78 = (1914) M.W.N. 936.**

———*Service grant—Effect of failure to perform services—Character of holding not changed.*

The fact that no services are performed by the grantee of a service tenure does not in itself make the holding adverse. (*Coutts and Ross*, JJ.) NANDLAL SAHU *v.* TIKAIT SHRINIVASA. **1 P. 292 = 1922 P. 541.**

Waste Land.

———*Waste land — Tank — Poramboke—Right of owners—Fishing and trees.*

Where evidence proved that plaintiff constructed a tank on the village poramboke and made all necessary repairs from time to time while the public had free access to the tank and that plaintiff exercised the right to the fish in the tank and to the trees on the bank, *Held*, that the village site must be presumed to have been granted to plaintiffs family perhaps subject to the condition of constructing and maintaining a tank for the use of the public. (2) that the right to fish and to enjoy the usufruct of the trees was reserved to the plaintiff. (*Miller and Abdur Rahim*, JJ.) BHUPATHIARAZU VENKATAPATTHIRAJU GARU *v.* PRESIDENT, TALUK BOARD, NARASAPUR. **19 I C. 727 = 13 M L.T. 419.**

GRATUITOUS ACT.

See CONTRACT ACT, Ss, 69, 70.

GRATUITY.

See C. P. C., S. 60.

GRAZING RIGHTS.

See (1) ADVERSE POSSESSION.
(2) EASEMENT.
(3) EASEMENTS ACT.

GROSS NEGLIGENCE.

See TORT—NEGLIGENCE.

GROUNDS FOR REMAND.

See C. P. C., O. 41, Rr. 23, 25.

GROUNDS FOR REVIEW.

See C. P. C., O. 47.

GROUNDS FOR TRANSFER.

See C. P. C., S. 24.

GROUNDS OF APPEAL.

See (1) APPEAL
(2) C. P.C., O. 41.
(3) PRACTICE.

GROVE.

See (1) LANDLORD AND TENANT.
(2) OUDH RENT ACT.

GROVE-HOLDER.

See AGRA TENANCY ACT.

GROWING CROPS.

See (1) GENERAL CLAUSES ACT, S. 3 (25).
(2) IMMOVEABLE PROPERTY.
(3) T.P. ACT, S. 3.

GUARANTEE.

See CONTRACT ACT, SS. 124-147.

GUARDIAN.

See (1) C.P. C., O. 32.
(2) GUARDIANS AND WARDS ACT.
(3) HINDU LAW—GUARDIANSHIP.
(4) MAHOMEDAN LAW — GUARDIANSHIP.
(5) MINOR.

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———*Alienation by guardian in her own name.*

Where a property belonging to her minor sons was mortgaged by a Hindow widow, not in a representative capacity but as an owner, deriving full proprietary title from a will of her deceased husband which subsequently turned out to be invalid. *Held*, the family property cannot be held liable under the mortgage, even though the *de facto* guardianship of the widow and legal necessity are proved; for the mortgage by a widow who had no title to the property is *ipso facto* void and the questions as to her motives are entirely irrelevant. (*Ryves and Daniels*, JJ.) NANDAN PRASAD *v.* ABDUL AZIZ. **21 A.LJ. 872=46 A. 497=1923 All. 581.**

———*Debt by guardian--Reasonable necessity —Creditor, duty of—Application of money.*

If the creditor acts honestly and under a *bona fide* belief arrived at after due enquiry that the necessity existed he is protected and is entitled to recover the debt irrespective of the manner in which the guardian may have ultimately applied it. (*Kanhaiya Lal and Suleman*, JJ.) RAGUBANS UPADHAYA *v.* INDRAJIT SINGH. **20 A.L J. 886=1922 All. 526.**

———*Promissory note by guardian—Necessary purpose—Minors not bound.*

The promissory note sued upon contained the words I (the sister) had taken these rupees because I conduct a suit in the Court is the guardian of minors named Thakordars and Sangerlal (brothers) and I shall pay you the rupees of the promissory note with interest at one per cent per mensem whenever you will demand to same. *Held* that assuming that she the executant (sister of minors) was a *de facto* guardian she does not purport in the document to bind the minors. They cannot therefore be personally responsible on the note, nor could the sister as the next friend or as sister of the minors make a contract with the plaintiff which would bind the estate of the minors. The plaintiff may proceed against the minors to recover moneys which they might be liable to pay as a debt incurred by their father or by their mother or sister for necessary purposes,

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in another suit properly framed. (*Macleod*, C. J. *and Crump*, J.) PARBHUBHAI *v.* BAI LALITA. **1923 Bom. 304.**

———*Custody of minor—Application for, if lies.*

A father who has never had the care or custody of his child can file a regular suit for the custody of his son, but cannot under the above Act apply for an order upon the person having the custody of the infant to hand him over to the father. 25 Bom. 574, Foll.; 38 Mad. 807, Dist. (*Scott*, C.J. *and Heaton*, J.) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS. **40 Bom. 600=87 I.C 216= 18 Bom. L.R. 582.**

———*Deed executed in personal capacity— Effect.*

Where a person executes a document in his own name and there is no doubt as to his acting as guardian of his ward does not question of ratification rise at all. The act must be taken as one which had no reference to the ward. (*Mookerjee and Walmsley*, JJ.) ANNADA KUMAR DAS *v.* DWARKA NATH MANDAL. **27 C.W.N. 1029=1924 Cal. 152.**

———De facto *guardian — Alienation by— Muhammadan Law.*

A mother acting as *de facto* guardian of a Muhammadan minor cannot alienate the minor's property. (*N. R. Chatterjee and Panton*, JJ.) ASHIRUDDIN MOHAMMAD *v.* TAHER MOHAMMED. **59 I.C. 306.**

———*Custody of minor—Mother's right to— Parting with child under agreement.*

The mother cannot be deprived of her natural right of absolute control over her own child by any agreement by which she made over the child to another to be brought up as the latter's own, though she might have definitely stipulated never to claim back the child. But there may be circumstances, *e.g.*, want of means which would render it undesirable in the interests of the infant that she should resume her rights after associations or expectations have been created on the part of the infant. However the law should lean in the mother's favour. (*Chatterjee and Panton*, JJ,) FANNY EMMELINE PETERSON *v.* EARNEST HENRY SHAVE. **36 I.C. 242=24 C.W.N. 711.**

———*Guardian — Alienation—Fraud void or voidable.*

A sale of a minor's property by his guardian in fraud of his right is only voidable at the instance of the minor after attaining majority. (*Chatterjee and Newbould*, JJ.) KRISHNA DHONE *v.* BHAGABAN CHANDRA. **34 I.C. 188.**

———*Guardian* de facto—*Power to mortgage.*

A *de facto* guardian has no power to mortgage the property of the ward. (*Reid*, C.J. *and Rattigan*, J.) CHOGHATTA *v* ASO MAL. **30 P.R. 1913=17 I C. 371= 270 P.L.R. 1914**

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———*Admission of guardian as to—Nature of possession—How far binding.*

Though a guardian cannot make admissions binding on wards, yet where the question that is being investigated is the nature of the possession of a guardian and he admits he is holding with the consent of the trustees, that will be admissible to prove that it was not adverse. (*Schwabe*, C.J. *and Coutts-Trotter*, J.) SRUNMUGAPPA *v.* SANGARAYA CHETTY.
18 L.W. 907=33 M.L.T. (H C.) 225=1924 Mad. 125.

———*Arbitration on behalf of ward—Onerous terms in reference—Gross negligence.*

The guardian's conduct in waiving the minor's right to object to irregular procedure was grossly negligent and that the minor was not bound by the reference or award. (*Spencer and Venkatasubbu Rao*, JJ.) CHINTAL APUDI SANYASI *v.* CHINTAL APUDI VENKATA RAO. **44 M.L.J. 263=17 L.W. 71=(1923) M.W.N. 7=32 M.L.T. 321=1923 Mad. 301.**

———*Sale by guardian—Subsequent sale by minor—Plea of invalidity—Whether personal.*

The guardian alienated certain property belonging to the minor. The minor afterwards alienated the same property on attaining majority. The transferee from minor sued for possession. The transferee from guardian objected on the ground that the plea of invalidity of sale not being for necessity nor for minor's benefit, was personal and the transferee cannot put it forth, *held*, that the transferee can put it forth that plea. (*Hallifax*, A.J.C.) MOHANLAL *v.* KISAN. **62 I C. 318=17 N.L.R. 53.**

———*Agent appointed by guardian—Liability to account.*

An agent appointed by a guardian of a minor is not liable to account to the minor for acts done by him as agent, the principle regarding trustees *de son tort*, not being applicable to him. (*Abdur Rahim*, O C.J., *and Ayling*, J.) RAMANATHAN *v.* MUTHIA CHETTY. **43 Mad. 429=38 M.L.J. 247=11 L.W. 405=56 I C. 358=(1920) M.W.N. 270.**

———*Guardian* de facto*—Powers of settlement for minor's benefit, if void.*

Where in a settlement of accounts between the plff. represented by his mother and maternal grandfather and defts. who were partners with plff 's father, a certain amount was fixed to be paid to plff. and interest to be paid regularly till the amount is paid and the plff.'s next friend his maternal uncle was regularly receiving interest. *Held*, that plff. cannot sue for an account. In cases of urgent and imperative necessity, or where the transaction from its nature must necessarily be beneficial to the minor a *de facto* guardian can alienate the property of the minor whether moveable or immoveable other acts of a *de facto* guardian if of a similar nature, are also binding. and the

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settlement having been accepted and acted upon for so many years by the minor's mother, his maternal grand-father, and even his present next friend, he cannot now turn round and say it was unauthorised and therefore should be set aside without even alleging that the settlement was not fair and *bona fide* or that it was liable to be opened on account of errors. (*Abdur Rahim*, O C J. *and Seshagiri Iyer*, J.) HAJEE SIDDIK HAJEE *v.* MAHD. HUSHUM SAIT.
(1916) 2 M.W.N. 341=37 I C 728=4 L W. 521.

———*Guardian* de facto*—Alienation by.*

An alienation by *de facto* guardian not for necessary purposes need not be set aside. (*Sadasiva Aiyar and Tyabji*, JJ.) THAYAMMAL *v.* KUPPANNA KOUNDON. **38 Mad. 1125=26 I.C. 179=27 M.L J. 285.**

———*Mother—Alienation by—Guardian* de facto*—Suit by alienee—Defence.*

The want of authority of *de facto* guardian is a good defence to a suit by a mortgagee against a minor to enforce a mortgage by such guardian. In a suit by the minor to set aside the mortgage a Court might decline to grant relief until the minor compensates the mortgagee for the benefit derived by him. Where a deed is executed by a minor and his mother without the latter describing herself as guardian, the mother cannot be held to be acting for the minor. A creditor seeking to bind a minor's estate should take care that the bond drawn up makes the minor's estate in law liable for the debt. (*White*, C.J *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLAICHAMI THEVAN.
37 Mad 38=21 M.L J 1077=10 M.L.T. 385=12 I C. 568=(1911) 2 M.W.N. 461.

———*Guardian—Alienation by—Validity.*

In a partition suit where the acts of a guardian are impeached by minors after his death, the validity of the dispositions depend upon their beneficial nature at the time they were made. The dispositions can be set aside if there is no evidence as to the beneficial nature. (*Abdur Rahim and Ayling*, JJ.) ULLIKARA KUTHUVA *v.* MOHIDEEN BAVA.
12 I C. 54=(1911) 2 M.W.N. 18.

———*Contract by guardian — Personal liability of ward.*

A guardian cannot contract in the name of his ward, and thus impose a personal liability on the ward; but a ward becomes personally liable under a covenant entered into by the Court of Wards on his behalf under section 61 of the U.P. Court of Wards Act. (*Wazir Hassan*, A.J.C.) B. PIRTHI PAL SINGH *v.* RAJA MUHAMMAD EJABY RASUL KHAN.
74 I.C. 90

———*Mother — Alienation by — Validity —Legal necessity—Charge—Decree, form of.*

If a mortgagee advancing money to a guardian on the security of a minor's property, said guardian not acting under the authority

of the Court, cannot prove necessity for raising the whole money, or prove that he was satisfied as to the necessity for such loan the contract of mortgage is voidable and is liable to be set aside at the option of the minor but the mortgagee will be entitled to a charge on the property for the necessary amount where a portion of the money has been spent for the minor's benefit, a decree ought to be passed subject to a charge in favour of the mortgagee for the amount found to be spent. 10 M.I.A. 454 ; 21 W.R. 287 ; 9 All. 340, Ref. (*Piggott*, A.J.C.) RAM BHAROSE SINGH *v.* MATA PROSAD. **14 I.C. 14.**

———*Guardian —Mortgage by—Subsequent admission by ward—Effect.*

Where a mortgage deed by a guardian on behalf of a minor contained recitals as to necessity and there was no other evidence as to necessity and besides the mortgagee had made no enquiries still subsequent admission by the minor on attaining majority that the debt was due from him though not amounting to estoppel or ratification of the transaction nevertheless shifts the burden of proof that the recitals are incorrect on to him and in the absence of such evidence and explanation as to the circumstances in which the admission was made such admissions can be made the basis of a decree. (*Chamier and Evans*, A.J.Cs.) SHEO NARAYAN SINGH *v.* MAHABIR PRASAD. **9 I.C. 56.**

———*How far minor bound by acts of guardian.*

A person under disability is no doubt bound by acts of his guardian, but such a person can reopen the proceedings after the disability ceases, if he satisfies the Court that the act of the guardian has prejudiced him. (*Das and Kulwant Sahay*, JJ.) RAO BAHADUR MAN SINGH *v.* MAHARANI NAWALAKHBATI.
2 P. 607 = 4 P.L.T. 335 = 1923 P. 492.

———*Guardian—Hand note by—If binding on minor.*

A minor cannot be bound by the hand note executed by the Guardian. (*Coutts and Sultan Ahmed* JJ.) KASHIPRASAD *v.* AKLESHWARI PRASAD. **58 I.C. 22 = 2 P.L.T. 22.**

———*—Illegitimate children.*

Equity Courts in England regard the mother as the guardian of an illegitimate child. The same rule should be applied in India, neither the father nor the mother has any absolute right to the custody of their illegitimate child. (*Fox*, C.J. *and Hartnoll*, J.) MA MYA *v.* FELI SLYM. **5 Bur. L.T. 164 = 17 I.C. 926 = 6 L.B.R. 116.**

GUARDIANS AND WARDS ACT (VIII of 1890).

———Habeas Corpus — *Order directing defendant to bring back minors from England, advisability of.*

A mandatory order directing the defendant to take possession of the persons of infants and

bring them back to India, should not be made as if the minor resisted the defendant, it would expose him to a proceeding under a writ of *Habeas Corpus*. (*Lord Parker.*) ANNIE BESANT *v.* NARAYANIAH.
38 Mad. 807 = 41 I.A. 314 = 27 M.L.J. 30 = 18 C.W.N. 1089 = 1 L.W. 570 = (1914) M.W.N. 585 = 16 M.L.T. 165 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 24 I.C. 290 = 12 A.L.J. 1155 (P.C.).

———*Proceedings under — Nature of jurisdiction – Interference in appeal.*

Proceedings under the Guardians and Wards Act cannot be attacked on the ground of a lack of that formality and precision of procedure which the C. P. Code exacts from a Court in India in a trial of a suit properly so called. The exercise of parental jurisdiction in guardianship matters by a District Judge cannot be guided by hard and fast rules, and if the order passed is on the whole a reasonable one, it will not be interfered with on appeal. (*Walsh and Ryves*, JJ.) MT. KHUNDI DEVI *v.* CHOTEY LAL.
44 A. 387 = 20 A.L.J. 468 = 1922 All. 338.

———*—District Court—Jurisdiction in regard to minors.*

The jurisdiction of the District Court in regard to minors is confined only to the powers expressly conferred on it by the Guardians and Wards Act. (*Scott*, C. J. *and Heaton*, J.) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS. **40 Bom. 600 = 37 I.C. 215 = 18 Bom. L.R. 582.**

———*Property in the hands of third person—Order of—Court declining to interfere—Appeal.*

There is no appeal against an order of the District Judge refusing to order the person in possession of a minor's property to hand over the property to an appointed guardian and referring the guardian to a separate suit. (*Chevis*, J.) NATHU RAM *v.* KARMON,
40 P.L.R. 1912 = 13 I.C. 326 = 115 P.W.R. 1912.

———*—District Court—Powers of, under the Act.*

The powers conferred upon the District Court by the Guardians and Wards Act are totally dissimilar to its powers as a Court of Ordinary Civil Jurisdiction and so an order purporting to be made under the Act which is not warranted by its provisions cannot be considered as a decree in a suit. 36 Cal. 193 ; 24 W.R. 193; 9 All. 191, Dist. (*Abdur Rahim and Spencer*, JJ.) KOMMA SOMAKKA *v.* KODIDALA PEDDA RAMAIH
36 Mad. 89 = (1911) 2 M.W.N. 519 = 13 I.C. 251 = 22 M.L.J. 193.

———*Provisions of, not to be applied to enable husband to get possession of wife.*

The provisions of the Guardians and Wards Act should not be put in force in order to enable a husband to get possession of the person of his wife. (*Scott*, J.) ASIBAI *v.* GIRDHARI RAM.
67 I.C. 882 = 3 P.L.J. 293.

GUARDIANS AND WARDS ACT (VIII of 1890).

———*Right of Muhammadan mother to visit her child in the custody of his father as guardian.*

There is no machinery under the Guardian of Wards Act to work out the right of the mother, under Muhammadan Law, to visit her child in the custody of the father as guardian. (*Rigg*, J.) HAZARA BIBI *v.* SULEIMAN HAJI MOHAMAD. **59 I.C. 562=13 Bur. L.T. 86.**

———S. 4—*Welfare of minor.*

Any friend of the minor can invoke the protection of the Court in case of minor being ill-treated but a stranger must satisfy the Court that the welfare of the minor would be better secured by removing the father from the lawful custody. Thus in castes not permitting widow remarriage where infant girls are married a stranger cannot successfully deprive the father of the custody of the infant daughter who is about to be given in marriage. (*Macleod*, C.J. *and Shah*, J.) KESHAVLAL *v.* AMBALAL. **64 I.C. 576=23 Bom. L.R. 1225.**

———Ss. 4 (2) and 7 (2)—*Guardian, if includes guardian* de facto—*Guardian appointed under the Act—Removal of guardian* de facto.

A *de facto* guardian is a guardian within S. 4 (2) of the Act and is removed from guardianship under S. 7 (2) by the Court's order appointing guardian. (*Ayling and Krishnan*, JJ.) WALLACE SITHA BOI *v.* WALLACE RADHA BOI. **51 I.C. 236=36 M.L.J. 189.**

———S. 4 (5) and (8)—*Residence—Minor leaving for England—Presented—Meaning of.*

Minors who had left before the institution of the suit for England and were living there, were not "ordinarily resident" of the District and hence were beyond the jurisdiction of the District Court. Under the Guardians and Wards Act a suit *inter partes* is not the form of procedure prescribed for proceedings in a District Court. (*Lord Parker*). MRS. ANNIE BESANT *v.* NARAYANIAH. **38 Mad. 807=41 I.A. 314=27 M.L.J. 30=18 C.W.N. 1089=1 L.W. 620=(1914) M.W.N. 585=16 M.L.T. 165=20 C.L.J. 253=16 Bom. L.R. 625=24 I.C. 290=12 A.L.J. 1155 (P.C.).**

———S. 7.

ANCESTRAL PROPERTY.
APPOINTMENT.
CONSIDERATION.
ENQUIRY.
MALA FIDE APPLICATION.
SECURITY BY GUARDIAN.
TESTAMENTARY GUARDIAN.
TRUST PROPERTY.

Ancestral Property.

———S. 7—*Ancestral property.*

No guardian can be appointed in respect of a Hindu minor's undivided ancestral property. 25 All. 407 (P.C.), Foll. (*Mullick and Thornhill*, JJ.) MAHANAND MISSIR *v.* DASRETH MISSIR. **46 I.C. 815.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Appointment.

Appointment.

———Ss. 7 and 17—*Appointment cannot be made—Contrary to decree.*

An order appointing a husband as guardian of his minor wife cannot be passed in disregard of the Civil Court's decree that he cannot have the custody of her person until she attained majority. (*Wilberforce*, J.) KHUDA BAKSH *v.* LAL. **2 Lah. L.J. 509.**

———S. 7—*Appointment of guardian—Finality of.*

An order appointing a guardian is final (subject to any other order passed in appeal) even if it was made under a misapprehension of the case. (*Le Rossignol and Martineau*, JJ.) MUSSAMMAT RAHUM *v.* MUSSAMMAT HUSSAIN BIBI. **52 I.C. 841=73 P.R. 1919.**

———S. 7—*Appointment—Minor not entitled to present possession of properties—Court, if may appoint guardian.*

Under the Guardians and Wards Act, it is open to a Court to appoint a guardian of the properties of a minor even though, the minor is not entitled to present possession of those properties. Such appointment will not interfere, with the right of the other persons to possession of the properties, as executor or trustee or otherwise. (*Oldfield and Ramesam*, JJ.) ALWAR AMMAL *v.* NARAYANA. **70 I.C. 360=14 L.W. 706.**

———Ss. 7 and 39—*Appointment—Effect—Removal of other guardians.*

An appointment of a guardian under S. 7 operates to remove by implication one who has not been appointed in any of the ways mentioned in S. 39. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) KRISHNAMURTHI AIYAR *v.* PARVATHI AMMAL. **42 I.C. 505=6 L.W. 760.**

———Ss. 7 and 34—*Appointment—Unconditional order—Operation of.*

An order of appointment of a guardian under the above Act operates immediately unless the order is made conditional upon security being furnished, in which case its operation commences with the furnishing of the security. 17 Cal. 347 (P.C.), Rel. to. (*Ayling and Seshagiri Iyer*, JJ.) SUBBA NAICK *v.* RAMA AIYAR. **40 Mad. 775=5 L.W. 261=37 I.C. 892=(1917) M.W.N. 426.**

———S. 7 (2)—*Appointment—Effect.*

When a guardian is appointed by Court for minor's property no other person not even the *de facto* guardian can legally bind the minor's estate. (*Wallis*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLICHAMI THEVAN. **37 Mad. 38=21 M.L.J. 1077=10 M.L.T. 385=12 I.C. 568=(1911) 2 M.W.N. 461.**

———Ss. 7 (b), 10—*Appointment—Dispute about guardianship of minor's property—Duty of Court.*

GUARDIANS AND WARDS ACT (VIII of 1890), .7—Appointment.

Once the power of the Court is invoked it is its duty as soon as any dispute about the guardianship of the minor's property or any allegation of detriment to the minor's interests resulting from such dispute is properly brought to its notice to set right the matters in the interests of the minor and appoint a proper person as his guardian. (*Kotwal*, A.J.C.) JIWANDAS *v.* RAJRANI. **64 I.C. 433.**

——S. 7 — *Appointment—Effect—Removal of natural guardian.*

Appointment of guardian of person and property of a minor under the Act means removal of natural guardian. (*Drake-Brockman*, J.C.) HANNUMAN SINGH *v.* GANESH PRASAD. **50 I.C. 580.**

——Ss. 7 and 8—*Appointment of guardians—Application for.*

Sections 7 and 8 do not necessarily require that when once proceedings have been instituted on a proper application, application should be taken from the person whom the Court appoints, though certainly in practice it is more usual to take one (*Daniels*, A.J.C.) MT. ISLAMAN *v.* MT. MAQBULAN **73 I.C. 255=9 O & A.L.R. 74.**

Consideration.

——S. 7—*Considerations—Minor to attain majority shortly — Declaration of guardian, whether proper.*

Where a minor is to attain majority shortly, the Courts cannot prolong the minor's minority under S. 3 of Indian Majority Act as amended by S. 52, Guardians and Wards Act, by appointing a guardian under S. 7, Guardian and Wards Act. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANIAH **38 Mad. 807=27 M.L.J. 30=18 C.W.N. 1089=1 L.W. 520=(1914) M.W.N. 583=16 M.L.T. 165=20 C.L.J. 253=16 Bom. L.R. 625=12 A.L.J. 1155=24 I.C. 290=41 I.A. 314 (P.C.).**

——S. 7 (3)—*Considerations—Will—Not probated—Postponement of decision—Discretion of Court.*

In an application for the appointment of a guardian of a minor, the Court has jurisdiction and is bound to consider the fact that there is a will although no probate had been granted in respect of the same. If the validity of the will is in question, it is discretionary with the Court to defer decision of the question of guardianship until the question of probate has been determined. 17 Bom. 560; 16 Mad. 380; 29 Bom. 832, Ref. (*Jenkins*, C.J. *and Woodroffee*, J.) AKHOY KUMARI DEBI *v.* HAZARI DASI DEBI. **42 Cal. 953=28 I.C. 972=19 C.W.N. 513.**

——Ss. 7 and 17—*Considerations—Husband and wife—Appointment of husband as guardian for wife—Restitution of conjugal rights.*

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Consideration.

The provisions of the Guardians and Wards Act should not be enforced to enable a husband to get possession of his wife which he has failed to do by execution of the decree obtained by him for restitution of conjugal rights. (*Scott-Smith*, J.) ASI BAI *v.* GIRDHARI RAM. **67 I.C. 882 (2)=3 Lah. L.J. 293.**

——S. 7 — *Considerations — Welfare of minor—Duty of Court.*

The law does not make it incumbent upon the Court to grant every application for guardianship. The welfare of the minor is the sole criterion in deciding whether a guardian should be appointed or not. Where the dispute is as to the validity of the marriage of the minor and the matter is not free from difficulty, the Court should refer them to a regular suit. (*Shadi Lal*, J.) KHAGANA *v.* LAKHMI DAS. **42 I.C. 191=90 P.L.R. 1917.**

——Ss. 7 and 8—*Considerations — Minor girl in property—Mother to be left undisturbed.*

A mother should be left undisturbed as regards the guardianship of her minor girl, where there is no property to be administered by the Court and a statutory guardian is unnecessary. (*Johnstone*, C.J.) MAHANT DEVI *v.* MADHO. **81 P.R. 1915=31 I.C. 237=176 P.W.R. 1915.**

——Ss. 7 and 17—*Considerations—Welfare of minor—Re marriage of mother.*

The re-marriage of a mother is not a sufficient reason to deprive her of the custody of her children. The question in cases of guardianship always is, whether it is for the welfare of the minor to appoint a guardian. The Court ought not to accept each and every application made for the appointment of a guardian. (*Shadi Lal*, J.) FATIMA *v.* RANI. **101 P.L.R. 1915=28 I.C. 507=36 P.W.R. 1915.**

——S. 7— *Consideration — Mother living in open adultery—Minor's paternal aunt, if can be appointed.*

The appointment of the minor's paternal aunt as guardian is proper when it is proved that the mother is living in open adultery and has borne children of such connection. (*Beadon*, J.) HARNAMI *v.* PARTAPI. **30 P.W.R. 1914=23 I.C. 938=67 P.L.R. 1914.**

——Ss. 7 and 15—*Considerations—Necessity to appoint.*

A guardian need not be appointed merely because an application for appointment is made. It should be considered whether it is really necessary to appoint a guardian. When the mother of a minor is managing the affairs of her son properly, no guardian need be appointed. (*Robertson*, J.) MUSSAMMAT DEOKI *v.* PAKHAT MAL. **60 P.W.R. 1913=19 I.C. 783=118 P.L.R. 1913.**

——S. 7—*Considerations—Mother — Proper guardian.*

A mother is the proper guardian for the person and property of a minor, until the con-

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Consideration.

trary is proved. An uncle should not be preferred specially when he is seporate and was not on good terms with the minor's father during his litetime. The fact that one will seek the assistance of her relatives in the management of the property is not objectionable. (*Kensington, J.*) PARTAP KUAR v. JWALASHAT.
62 P.L.R. 1913=19 I.C. 428=12 P.W.R. 1913.

——Ss. 7, 17 and 21—*Considerations—Welfare of minor—Will of minor—Appointment of a guardian for minor—Matters to be considered in making an order.*

An order of appointment of a guardian to a minor can only be made on the sole ground of welfare of the minor; the Court cannot go against the will of the minor, especially when he is old enough to form an intelligent opinion. (*Rattigan and Chevis, JJ.*) BHAGVANA v. RAM CHAND. 231 P.L.R. 1911=11 I.C. 478=196 P.W.R. 1911.

——Ss. 7 and 25—*Considerations—Father's right to custody—Arrangement with mother—Effect.*

Where there is nothing established against a father except that he and his wife are on bad terms and living apart, he is entitled to the custody of his child. The fact that he at one time agreed to allow the child to remain with the mother is immaterial as it is a revocable agreement. (*Oldfield and Venkatasubba Rao JJ.*) SRI RAJA BOMMDEVARA SATYANARAYANA v. NARASIMMA. 18 L.W. 173=(1923) M.W.N. 668=1924 Mad. 46.

——S. 7 (1)—*Considerations—Welfare of minor—Appointment of guardian by Court—Welfare of minor, the only criterion.*

Where an application is made under the Act the only question to be considered under S. 7 (1) is whether it is for welfare of the minor, that an order should be made and whether a particular person should be made his guardian according to his personal law, is an irrelevant point. (*Sadasiva Aiyer and Moore, JJ.*) DURGAMMA v. LINGAPPA. 33 I.C. 77=19 M.L.T. 294.

——S. 7—*Considerations — Rights of mother—Wishes of relatives.*

Where no charge of waste or mismanagement had been proved, the mere desire of the relatives of the minor is not a sufficient reason for depriving the widowed mother of the minor of her recognised claim to be the guardian of her minor child's property. (*Kotwal, A.J.C.*) MT. LAXMIBAI v. ABDUL KADIR.
68 I.C. 474.

——Ss. 7, 17 and 19 (b)—*Consideration—Welfare of minor—Fitness of natural guardian—Power of Court to inquire into—Conversion of father to Islam—Effect.*

A Court can both in equity and under the Act interfere with the legal rights of guardianship of the parents. The welfare of the children should primarily be considered. The

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Enquiry.

Court should ascertain what could be for the welfare of the minors, whether any of them was sufficiently advanced to make an intelligent preference, what means were at the disposal of such parents to provide for them in future and whether the father would under the altered circumstances be able to provide a fit home for his children. If the father is not able to provide a fit home he should be held to be not fit to be the guardian. Per *Crouch, A.J.C.*:—The provisions of the Act are in no way limited by the English Practice. English decisions cannot be considered to have any authority in India when dealing with a conflict between Hinduism and Islam. Change of religion by itself does not necessarily render a father unfit to be the guardian of his minor children. Ss. 17 and 19 of the Act must be read together.—*Quaere:*—Whether the general rule that a child should follow the religion of the father could apply without qualification to a case where the religion has been newly adopted by the father and is not that in which the child was born or reared. (*Hayward, J.C. and Crouch, A.J.C.*) RADHI BAI v. D. R. VASANMAL.
41 I.C. 571=11 S.L.R. 17.

Enquiry.

——Ss. 7 and 13—*Enquiry—Application under—Courts, duty of.*

A Court dealing with an application under the Act should not dispose of the matter in the absence of the applicant by making an order in favour of his opponent as though the absent person were a defaulter in a Civil suit. In determining whether a person is a minor the Court should take an independent view of its own and not adopt a finding in some Civil suit that that person is a minor. (*Walsh and Ryves, JJ.*) RAM SAHAI v. CHHOTEY LAL.
19 A.L.J. 489=63 I.C. 567=3 U.P.L.R. (All.) 105.

——S. 7—*Enquiry under — Summary, nature of.*

S. 7 contemplates only a summary inquiry followed by an order for the welfare of the minor, and not elaborate inquiries whether the property left by the deceased was joint or self-acquired. When an application is made on the footing and with the claim that the minor is separately entitled to separate property, the Court should appoint a proper person as guardian of his property leaving it to the guardian to institute suits for the recovery of the property claimed. (*Batchelor and Shah, JJ.*) GURAPPA SHIVGENAPPA PUTTI v. TAYAWA SHIDAPPA. 40 Bom. 513=35 I.C. 16=18 Bom. L.R. 343.

——S. 7—*Enquiry—Summary of.*

The proceedings under S. 7 of the Guardians and Wards Act are summary. The Judge has to make such enquiry as he thinks necessary to satisfy his mind, and has got unfettered discretion in the number of witnesses to be

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Mala fide Application.

examined, length of cross-examination etc. (*Kincaid, J.C.*) BIBI FATMA *v.* BAKARSHAH.
66 I.C. 888=15 S.L.R. 175.

Mala fide Application.

——**S. 7**—*Mala fide application—Minor having no property—Institution of proceedings with ulterior motives—Legality of.*

Where no guardian for the person or property of a minor was necessary and a master instigated his servant who was the grandfather of the minor to make an application for appointing himself as the guardian so that the minor may be married to his son, it was held that it was not a *bona fide* judicial proceeding and orders made thereon were wholly without jurisdiction. (*Mookerjee and Carnduff, JJ.*) SUBHADRA KOER *v.* DHAJADHARI GOSSAIN.
15 C.L.J. 142=13 I C. 893=16 C.W N 444.

Security by Guardian.

——**Ss. 7 (1) and 34**—*Security by guardian—Appointment on condition of furnishing order whether under S. 7 (1) or S. 34.*

An order of appointment of a guardian of property of an infant of condition that he furnishes security is an order under S. 7 (1) and not under S. 34 and is appealable under S. 47 (4). Where a guardian is appointed on condition that he furnishes security the amount taken as security is sufficient if it affords reasonable protection against malpractices which require time to be carried out. 1 C.L.J. 180, Foll. (*Mookerji and Beachcroft, JJ.*) HARENDRA NATH MOOKERJI *v.* ARDHENDHU KUMAR GANGULY. **24 I. C. 202.**

——**Ss. 7 and 47 (a)**—*Security by guardian—Conditional and final orders of appointment—Appeal.*

An application for the appointment of a guardian for the minor's property was made on which the Court passed an order appointing the mother as guardian and directing her to furnish security within two weeks of the date of the order. After such security was furnished and accepted the Court issued a final order of appointment. An appeal was preferred against the final order alone. *Held*, that the first order was only preliminary and conditional and did not take effect till the security was furnished and that the final order was the only order appointing the mother as guardian under S. 7. An appeal against the latter order was, therefore, maintainable. (*Spencer and Krishnan, JJ.*) SANGAYYA THEVAN *v.* [illegible]ETAMMAL.
55 I.C. 513=11 L.W. 377.

——**Ss. 7 and 34**—*Security by guardian—Acts of guardian prior to furnishing security.*

In case of a conditional order of appointment of a guardian the minor's natural guardians act done in good faith prior to the furnishing of security by the guardian appointed are valid. (*Ayling and Seshagiri Iyer, JJ.*) SUBBA NAICK *v.* RAMA IYAR. **40 Mad. 775=3 L.W. 261=37 I.C. 892=(1917) M.W.N. 425.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Trust Property.

——**Ss. 7 and 47 (a)**—*Security by guardian—Conditional and final orders of appointment.*

The Act does not require two orders *viz. interim* order of approval and a "final order" of appointment of the guardian of property nor does it postpone the appointment till security is furnished. On the other hand the appointment should be before the requisition for and the furnishing of security. (*Sadasiva Aiyar and Moore, JJ.*) GOPPAMMAL *v.* SRINIVAS AIYANGAR. **34 I.C. 432=20 M.L.J 508.**

Testamentary Guardian.

——**S. 7 (3)**—*Testamentary guardian—Hindu Law—Appointment of guardian for minor nephew—Validity.*

Under Hindu Law, a man cannot appoint a guardian for his minor nephew. A provision in the will of a Hindu testator appointing a guardian for his nephew does not bind the Courts under S. 7 (3) of the Guardian and Wards Act. (*Chevis, J.*) DHANPAT RAM *v.* PREM SINGH. **20 P.L.R 1911=12 I C. 432=220 P.W.R. 1911.**

——**S. 7**—*Testamentary guardian—Oral declaration—Sufficiency of.*

It is only where there is a *written* will appointing a guardian that a testamentary guardian stands in the way of the appointment of a statutory guardian by the Court. In the case of an appointment of a guardian by an oral will it is open to the Court to ignore this appointment and make statutory appointment of its own if it considers best in the interests of the minor. (*Ayling and Venkatasubba Rao, JJ.*) PARVTI AMMAL *v.* ELAYAPERUMAL KONAR.
16 L.W. 415=(1922) M W.N. 167=1922 Mad. 70 (1).

——**S. 7 (3)**—*Testamentary guardian—Precludes order under.*

Under S. 7, cl. (3) where a guardian has been appointed by will, an order under that section declaring another person to be guardian in his stead shall not be made, until the powers of the guardian appointed by the will have ceased under the Act. (*Sadasiva Aiyar and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHI AMMANGAR. **40 Mad. 672=34 I.C 766=30 M.L J. 504.**

Trust Property.

——**Ss. 7 and 29**—*Trust properties—If guardian can be appointed for—No interest in surplus income.*

Properties given to the head of a mutt as trustee are trust properties and no guardian in respect thereof can be appointed under S 7. Nor can sanction be granted under S. 29 to sell the properties. Such a sale is invalid. A Dharmakarta has ordinarily no interest in the surplus income of the mutt properties though in a given case such a right might be established. A right to a portion of the income of the

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Trust Property.

trust properties does not vest the properties in the beneficiary so as to attract the provisions of S. 7 and 29 of Guardians and Wards Act. 6 L.W. 337, Foll. (*Seshagiri Aiyar and Bakewell*, JJ.) OBLA VENKATACHALAPATHI AIYAR *v.* THIRUGNANA SAMBANDA PANDARA SANADHI. **83 M.L.J. 297 = 42 I.C. 273 = 6 L.W. 637.**

———S. 7—*Trust property.*

An application under S. 7 of the Act for the appointment of a guardian for the management of the *debutter* properties of an idol on behalf of an infant *Shebait* cannot be entertained where the minor is merely a trustee and has no proprietory interest in the properties. (*Coutts and Dass*, JJ.) KILLBY *v.* BAHURIA SHEORATAN. **1 P. 432 = 3 P.L.T. 805 = 1922 P. 527.**

———Ss. 8 and 11—*Objection petition by relative of minor—Application for appointment of guardian—Failure to serve notice under S. 11, if fatal.*

The petition of objection of the relative might be regarded in substance as an application by a relative of the minor for the appointment of a guardian within S. 8 of the G. and W. Act, 1890. Failure to comply with the provisions of S. 11 as to the service of notice of the application, was not a fatal defect which would invalidate the proceedings of the Court, as all the parties interested were already before the Court. 38 Cal. 783, Dist. (*Mookerjee and Beachcroft*, JJ.) SUNDAR MONI DAI *v.* BANG SIDHAR PATNAIK. **18 C.W.N. 160 = 16 I.C. 900 = 17 C.L.J. 405.**

———S. 8—*Order without application—Validity—Pardhanashin lady—It can apply.*

A Court has no power to make an order appointing a guardian of minors except on a substantial application. The mere fact that the mother of a minor is a pardanashin lady is no obstacle to her being appointed guardian of the minor son. (*Chitty and Chatterjea*, JJ.) JAIWANTY KUMARI *v* GAYADHAR UPADHYA. **38 Cal. 226 = 15 C.W.N. 676 = 10 I.C. 334 = 14 C.L.J. 226.**

———Ss. 8 and 16—*Court's interference in family affairs.*

A Court should refuse to take proceedings under the Act when the result would be an endless series of family disputes and thus may involve an unnecessary interference with the family arrangements which are quite satisfactory .(*Kensington*, C.J.) HAYAT KHATUM *v.* SHARAM KHATUM. **93 P.R. 1914 = 26 I.C. 524 = 238 P.L.R. 1915.**

———S. 8—*Appointment of guardian—Right of appeal or revision.*

It is open to a person on whom notice should have been served but has not been, to come forward and object in revision to the order passed appointing a person as guardian. (*Daniels*, A.J.C.) MT. ISLAMAN *v* MT. MAQBULAN. **73 I.C. 255 = 9 O. & A.L.R. 74.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 9.

———Ss. 9, 10, 19 and 52—*Custody of minor—Suit or application—Delegation of guardianship—Revocation of—Suit in District Court—Transfer of, to High Court—Letters Patent (Mad.), cls. 13 and 20—Mandatory order for delivery of infants' resident in England—Impropriety of.*

A Hindu father appointed the deft., an English lady, as guardian of the persons of his minor sons on the offer of the deft. to take them to Europe and educate them in England. Subsequently the father cancelled the arrangement and demanded his children back. On the defendant's refusal to do so, the father instituted a suit in the Chingleput District Court for a declaration that he was entitled to the custody and guardianship of his sons and for an order directing the deft. to hand them over to him. The suit was transferred under cl. 13 of the Letters Patent to the High Court of Madras which granted a decree as prayed for. *Held*, that the suit was entirely misconceived and should be dismissed. The District Court has no jurisdiction over infants except such as is conferred by the Guardians and Wards Act. The jurisdiction of the District Court is limited by S. 9 of the Act to infants ordinarily resident within the District and the minors in question having left India months prior to the proceedings were not ordinarily resident in the District. A suit *inter partes* is not the form of procedure prescribed by S. 10 of the Guardians and Wards Act for proceedings touching the guardianship of infants. *Semble*: The powers of the Madras High Court to which the suit was subsequently transferred under cl. 13 of the Letters Patent, relating to the case would be those which but for the transfer might have been exercised by the District Court. Even if the High Court had any jurisdiction with regard to minors beyond that exercisable by the District Court a mandatory order directing the deft. to deliver possession of the minors ought not to have been made since any attempt to enforce it would expose the deft to *habeas corpus* proceedings in England and also because the minors were not represented before the Court and no steps were taken to ascertain their wishes and interests. The order of the High Court declaring one of the infants who was soon to attain majority, a ward of Court and then declaring the plff. as their guardian under S. 7 so as to prolong his minority without consulting the infant's wishes and when the plff. was a fit person to be the guardian opposed to S. 19 of the Guardians and Wards Act. (*Lord Parker.*) ANNIE BESENT *v.* NARAYANIAH. **38 Mad 807 = 41 I.A. 314 = 27 M.L.J. 30 = 18 C.W.N. 1089 = 1 L.W. 520 = (1914) M.W.N. 585 = 16 M.L.T. 165 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 24 I.C. 290 = 12 A.L.J. 1155 (P.C.).**

———Ss. 9, 39—*Residence of applicant.*

According to the Act, the applicant for guardianship of minor must be residing within the

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jurisdiciton of the Court to which the application is made. (*Rafique and Piggott*, JJ.) ASGHAR ALI *v.* AMINA. **36 A. 280 = 24 I C. 59 = 12 A.L J. 392.**

——**Ss. 9 and 25**—*Custody of minor—Suit or application.*

The dictum of the (P.C.) in *Besant* v. *Narayaniah* (38 Mad. 807) that a suit *inter parties* is not the right proceeding does not do away with the effect of the judgment in *Sharifa* v. *Mune Khan*, 25 Bom. 574; 3 Bom. L.R. 167. (*Scott*, C. J. *and Heaton*, J.) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS. **40 Bom. 600 = 37 I.C. 215 = 18 Bom. L.R. 582.**

——**Ss. 9 and 25**—*Custody of minor—Suit in Mufussal Court—Jurisdiction.*

A Mufussal Court other than the District no jurisdiction to entertain proceedings by a father for the custody of his minor child. A suit will not lie for the purpose in the Civil Court. 38 Mad. 807, Foll.; 40 Bom. 660, Diss.; 4 Beng. L. R. (App.) 36; 8 Cal. 266; 9 Mad. 34; 26 All. 594 and 25 Bom. 574, Ref. (*Wallis*, C.J., *Ayling and Sadasiva Iyer*, JJ.) K. SATHI *v* RAMANDI PANDARAM. **42 Mad. 647 = 9 L W. 600 = 37 M.L J 93 = 26 M L T. 61 = 53 I.C. 399 = (1919) M.W.N. 487 (F.B.).**

——**Ss. 9 and 25**—*Custody of minor—Suit, if maintainable.*

A suit by a father for custody of his child is maintainable especially as no remedy exists under the Guardians and Wards Act. (*Robinson*, J.) MATHURABAN *v.* TEWARY. **44 I.C. 753 = 10 Bur. L.T 186.**

——**S. 9**—*Custody of minor—Suit for application.*

The Guardians and Wards Act forbids proceedings being taken in the ordinary way touching the guardianship of infants. A suit for custody of a child must be brought under the Guardians and Wards Act which confers jurisdiction on the District Court over minors ordinarily resident in the District. The objection to jurisdiction could be raised at any stage. 27 M.L.J. 30 (P.C.), Foll. (*Young*, J.) ARUNACHALLAM PILLAY *v.* AYAMA. **8 L.B.R. 211 = 29 I.C. 768 = 8 Bur. L T. 128.**

——**S. 9 (2)**—*Appointment of guardian—Property of minor in the hands of administratrix.*

A guardian of the property of a minor, in the hands of the administratrix to his father's estate can be validly appointed. The appointment of administratrix does not mean that the minor has no property in the estate. 8 B.L R. 208, relied on. (*Sanderson*, C.J. *and Mookerjee*, J.) LALIT KUMAR MUKERJEE *v.* DASARATHI SINGHA. **66 I.C. 261 = 48 Cal. 802,**

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——**S. 10**—*Illness of child no reason.*

Illness of a child in the custody of the adoptive father is no reason to make over the child to the natural father. (*Campbell*, J.) PIARE LAL *v.* UDAI RAM. **1923 Lah. 376.**

——**S. 10 (1) (a)**—*Application stating age and date of birth of minor—Whether evidence to prove age of minor.*

Proceedings for the appointment of a guardian, the cause title of which stated the age of the minor at the date of proceedings are not admissible in evidence for the purpose of showing what the age of the minor then was. (*Fletcher and Newbould*, JJ.) BROJA KRISHNA GHOSE *v.* BENIMADHAB GHOSE. **41 I.C. 744.**

——**Ss. 11, 13 and 17 (3)**—*Guardian of minor, appointment of—Person in custody of minor—Opportunity to adduce evidence.*

An order appointing a person to be the guardian of the property and the person of the minor without giving the person in custody of the minor an opportunity to adduce evidence to show the unfitness of the applicant for guardianship and without fixing the date for the hearing of the petition, is bad and ought to be set aside. (*Chatterjee and Walmsley*, JJ.) TALUK RAJ KOER *v.* CHOOLACHOOA KOER. **20 I.C. 578.**

——**S. 11**—*Fit case to appoint a guardian.*

Where it was alleged that an alienation of a part of the property of the minors was necessary to pay off certain debts on which interest was accumulating and that it would be impossible to alienate so long as the applicant did not get a certificate of appointment from the Court. *Held* that this was a fit case in which the application for the appointment of a guardian ought to have been accepted. (*Moti Sagar*, J.) MT. TAHAN *v.* SHADI. **1923 Lah. 601 (1).**

——**Ss. 11, 13 and 48**—*Refusal to appoint applicant as guardian—Subsequent application for the same purpose not maintainable—Proceedings under the Act—Nature of.*

Where a person's application to be appointed as guardian of a minor is rejected and there is no appeal from that order a subsequent application for the same purpose by the same person is not competent. Proceedings under the Guardians and Wards Act are not intended to be summary. Where a District Judge commits a material irregularity in appointing a particular person as guardian ignoring the procedure laid down in Ss. 11 and 13 and failing to consider whether the guardian was by character and capacity a fit person and whether the appointment was for the welfare of the minor, his procedure is materially irregular. (*Kotwal*, A.J.C.) GOPALRAO *v.* SHRAWAN. **1923 N. 36.**

——**Ss. 11, 13 and 17**—*Person not a party to proceedings—Appeal—Revision.*

A person who is not made a party in an application under S. 10 but to whom notice ought to have gone under S. 11 (*a*) (*iv*) as a

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person interested in the result of the application, cannot under S. 47 (*a*) file an appeal from the order passed on the application. But he can file a revision under S. 115, C.P.C. Ss. 13 and 17 are wide enough to cover an enquiry into any of the matters which can legitimately form the subject of opposition to the grant of a certificate of guardianship to a particular individual. (*Stuart and Kanhaiya Lall*, A.J Cs.) JHANDESHUR *v.* BAIJ NATH.
1 O L J. 761=27 I.C. 121=18 O.C. 66.

———S. 12—*Minor becoming* Muttawalli—*Powers of, District Judge's.*

Where a minor, in respect of whom a guardianship application is made, becomes a *Muttawalli* under a trust deed, the District Judge is empowered to give directions for the discharge of the *Muttawalli's* duties pending the majority of the minor or a regular suit by some person interested in the endowment. (*Piggott and Walsh*, JJ.) KHATUN BEGAM *v.* EJAZ AHMAD.
39 All. 288=37 I.C. 885=15 A.L.J. 132.

———Ss. 12 and 25—*Court's power to put minor in possession of guardians.*

If an appointment of the guardian of the person of a minor is made, the proceedings cannot be regarded as complete until the guardian has obtained effective possession of the person of the ward. If the guardian is not in such possession, the Court should take action under S. 12 to place the minor in the possession of the guardian. 26 All. 594, Ref. (*Chamier and Piggott*, JJ.) UTMA KUAR *v.* BHAGWANTA KUAR. **37 All 513=29 I.C. 416=13 A.L.J. 742.**

———S. 12—*Power of District Judge to direct any party to proceedings to deposit in Court any sum due to minor—Jurisdiction.*

In a proceeding under this Act for the appointment of a guardian, the District Judge has no power to direct any party to the proceeding to deposit in Court any sum due to the minor. (*Rafique and Piggott*, JJ.) MOHAN SINGH *v.* ANAR KUER. **24 I.C 518=12 A.L.J. 788.**

———Ss. 12, 43 and 47—*Application for guardianship — Pending—Order sanctioning mortgage—Validity.*

An order of the District Judge sanctioning the marriage of a minor girl, while an application for the appointment of her guardian is pending is bad. (*Shah and Crump*, JJ.) LAXMINARAYAN SESHAGIRI *v.* PARVATIBAI PARMESHWAR. **44 Bom. 690=57 I.C. 79=22 Bom. L.R. 399.**

———S. 12 (1)—*Power to direct payment into Court or to appoint Receiver of property.*

On an application under S. 12 the Court has power to direct payment of the minor's money into Court or to appoint a Receiver of his property. (*Robertson*, J.) *In re* BAI JAMNABAI.
36 Bom. 20=11 I.C. 654=13 Bom. L.R. 487.

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———Ss. 12 (1), 25, (1) and 45—*Discretion as to marriage of minor—Disobedience of—Order of Judge—Jurisdiction.*

Where a Court appointed a guardian for the person of a minor and also provided that the minor should not be married without the consent of a particular person or the Court and on the violation of the order by the guardian in giving the minor in marriage the Court ordered production of the minor and imposed fine under S. 45 of the Guardians and Wards Act on their failure to produce the minor, *held*, that the order of the Judge was not made either under S. 12 (1) or under S. 25 (1) and so S. 45 of the Guardians and Wards Act had no application. (*Mookerjee and Carnduff*, JJ.) SUBHADRA KOER *v.* DHAJADHARI GOSWAMI.
15 C.L.J. 147=14 I.C. 380=16 C.W.N. 447.

———S. 13—*Evidence—Kanungo's report, whether admissible.*

In proceedings under this section the report of a Girdawar Kanungo in favour of the appointment of a certain person as guardian is inadmissible in evidence and the order of appointment should not be based upon it. (*Rafique and Piggott*, JJ.) SUBHAG SINGH *v.* RAGUNANDAN SINGH. **36 All. 282=24 I.C. 115=12 A.L.J. 385.**

———S. 13—*Procedure, if summary.*

The procedure under S. 13 is not intended to be summary and therefore a Court should not reject an application for the appointment of a guardian of a minor without enquiry. 17 Bom. 560; 15 I.C. 195, Foll. (*Scott Smith*, J.) JIWAN *v.* ZEBO. **63 P.L.R. 1917=44 I.C. 976=134 P.W.R. 1917.**

———S. 13—*Order with enquiry—Husband claiming to be guardian of his minor wife.*

A husband may in many cases be a suitable guardian of his minor wife but the question must be settled, one way or the other, after proper inquiry as contemplated by S. 13 of the Guardians and Wards Act. An order made without proper inquiry is bad and ought to be set aside. (*Scott-Smith*, J.) TIRHU *v.* LACHMAN. **109 P.L.R. 1912=16 I.C. 195=71 P.W.R. 1912.**

———S. 15—*Joint guardians—Inability to give security—Appointment of one—Consent of mother.*

A guardian who was supported by the mother of a minor was appointed along with another person as joint guardian. He failed to furnish the necessary security, the joint guardian was appointed sole manager of the minor's property. No opportunity was given to the mother to state her views before this appointment was made. *Held*, that the order was injudicious and made without due consideration and ought to be set aside. (*Sharfuddin and Richardson*, JJ.) MAHABBAT ALI CHOWDHURY *v.* SHAMSHER ALI CHOWDHURY.
15 I.C. 703.

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———S. 17—*Religion of minor—Duty of Court in considering the question of custody of young girl.*

The Court in considering the question of custody of a young girl should see that she should be placed under the guardianship of a person who will bring her up in the religion of her people. (*Mears*, C.J. *and Banerji*, J.) RAM PRASAD *v.* DISTRICT JUDGE OF GORAKHPORE. **57 I.C. 661 = 2 U.P.L.R. (A) 336.**

———S. 17—*Mother leading irregular life—Appointment of guardian—Conditions.*

The guardianship of a minor child was temporarily taken out of the hands of the mother who was leading a very irregular life at the time of the institution of the proceeding and her conduct was such that it would be wrong to confide a child to her. The mother does not permanently forfeit all her natural right to the custody of her child. The mere fact that the mother earns a small and possibly precarious income is in itself no reason for depriving her of the child. (*Chatterjee and Panton*, JJ.) MRS. WANIFRED *v.* MRS. WANIFRED CHAPMAN. **57 I.C. 13 = 31 C.L.J. 365.**

———S. 17—*Illiteracy of—Mother, whether disqualification.*

Simple illiteracy is no disqualification for the appointment of a mother as guardian of her sons. (*Chatterjee and Chapman*, JJ.) *In re* NIKHARANNESSA BIBI. **33 I.C. 918 = 20 C.W.N. 663.**

———S. 17—*Considerations—Welfare of minor—Rights of guardianship—Wishes of minor and of deceased parents.*

In selecting a guardian the main consideration must be the welfare of the minor and the recognised rights of guardianship under the Law to which the minor is subject, must, if necessary, be given a subordinate position. Consistently with the welfare of the minor the Court should also have regard to the wishes of the deceased parents of the minor and also to the minor's wishes when he is of years of discretion. 32 Bom. 50; 29 All. 210. Foll. (*Mookerjee and Beachcroft*, JJ.) FULKUMARI BIBEE *v.* BUDH SINGH DHUDHURIA. **25 I.C. 112 = 18 C.W.N. 1198.**

———S. 17—*Welfare of minor.*

Where there was a maintenance order against the father, the amount under which was long delayed and partly not paid and where the ward, a boy of 14, wanted to learn tailoring while the father wanted him to be put to school. *Held*, the father should not be appointed as guardian especially when he had re-married and divorced the ward's mother. (*Campbell*, J.) MT. MUKABAR *v.* KARIM BAKHSH. **1923 Lah. 283.**

———Ss. 17, 7—*Consideration — Husband who failed to get restitution of a good guardian.*

In case of his failure to get restitution of conjugal rights by execution of the decree the husband should not be appointed guardian of the person of his wife. (*Scott-Smith*, J.) ASA BAI *v.* GIRDARI RAM. **67 I.C. 882 = 8 Lah. L.J. 293.**

———S. 17—*Unchaste mother—Rights of guardianship.*

The mere fact of unchastity is not enough to deprive a mother of her rights of guardianship. (*Kotwal*, A.J.C.) MT. GANGU *v.* MT. KONGSHI. **74 I.C. 53 = 1923 Nag. 305.**

———Ss. 17 and 19—*Guardianship of minor—Father—Suit for custody of child.*

Where a father has never had custody of his infant child there is no provision under Guardians and Wards Act by which the father can obtain the custody of the child. S. 19 of the Guardians and Wards Act precludes from appointing any one other than the father of the minor as guardian of the minor unless the minor's father is found to be unfit to be guardian of the minor's person. The words of S. 19 of the Guardians and Wards Act so far from being subject to the provisions of S. 17, expressly override them. 38 M. 807, followed. (*Batten*, J.C. *and Hallifax*, A.J.C.) DHAN KUMARI DEVI *v.* MAHENDRA SINGH. **6 N.L.J. 111 = 19 N.L.R. 45 = 1923 Nag. 199.**

———S. 17—*Remarriage of a minor's mother—First husband's reversioner v. step-father—to guardianship.*

Remarriage of a minor's mother does not deprive her of the right to guardianship when the minor is too young to be taken away from her custody. The minor should be left in her charge, but one of the first reversioners of the deceased father of the minor and not her new husband should be appointed as guardian of the minor's property. (*Chevis*, J.) AHMAD *v.* RAHMATAN. **40 I.C. 107 = 32 P.W.R. 1917.**

———S. 17—*Religion of minor—Presumption as to—Duty of guardian—Marriage of Christian minor with* Chamar *valid—Right to be appointed guardian.*

A child in India must under ordinary circumstances be presumed to have his father's religion and his corresponding civil and social status, and it is therefore ordinarily the duty of a guardian to train his infant ward in such religion. 11 W.R. 77 P.C., Foll. An Indian Christian who was originally a *Chamar* died leaving behind his wife and a minor daughter. Shortly after this, the wife was received back into the *Chamar* brotherhood and immediately afterwards she married the minor girl to a *Chamar* to whom she had been already betrothed by her father. On an application for the appointment of a guardian to the person of the minor. *Held*, that in as much as the father of the girl was, and died, a Christian, the girl must be presumed to be a Christian and the alleged marriage was therefore invalid (2) that the mother of the girl having renounced the Christian religion was not a fit person to have charge of the girl who must be brought up as

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Christian until she reached years of discretion when she could choose for herself. (*Scott-Smith*, J.) ALLUNT *v.* BADAMO.
32 I.C. 897=48 P.W.R. 1916.

——S. 17—*Welfare of minor—Maternal grandmother v. paternal grand-father's brother.*

A minor's maternal grandmother will be preferred when the minor's welfare requires it to his paternal grandfather's brother as guardian of the person and property of the minor. (*Beadon*, J.) BATA *v.* MUSSAMMAT BHAGAN. **45 P.W.R. 1913=19 I.C. 609=192 P.L.R. 1913.**

——Ss. 17 and 19—*Father—Guardianship—Second marriage.*

The fact that the father has married a second wife is not a sufficient ground for holding that he is unfit to be the guardian of his children in the absence of proof of ill-treatment by the father or the step-mother. Th the first wife was not properly treated, is not a ground for presuming that the children will not be properly looked after. The Legislature advisedly draws a distinction between the legal rights of husband and parents on the one side and those of the other near relations on the other side. The former could be deprived of the right of guardianship only when they are found to be unfit to be guardians and the latter when it does not conduce to the welfare of the minor. S. 19 applies to the former case and S. 17 applies to the latter case. (*Seshagiri Aiyar and Napier*, JJ.) AUDIAPPA *v.* NALLENDRAN. **39 Mad. 473=28 M.L.J. 442=17 M.L.T. 389=29 I.C. 4=(1915) M.W.N. 330.**

——S. 17—*Welfare of minor—Father's wishes.*

Under S. 17 of the Act the question of guardianship has to be decided with reference to all the considerations mentioned in the section and where it is positively injurious to give effect to a father's wishes, the Court will interfere even in his life time. (*Wallis and Abdur Rahim*, JJ.) ALHEHRECHT *v.* BATHEE JELLAMMA. **11 M.L.T. 53=(1912) M.W.N. 53=13 I.C. 453=22 M.L.J. 247.**

——S. 17—*Welfare of the child—Paramount consideration.*

The welfare of the minor is the paramount consideration in an application for the appointment of a guardian for the person of a minor though the rights of guardianship under law must also be considered but the qualification or otherwise of the proposed guardian is only secondary to that of the minor's welfare. 32 Bom. 50; 20 All. 210; 33 All. 222; 10 I.C. 283; 21 M.L.J. 195; 16 M.L.J. 357, Foll. (*Sundara Iyer and Spencer*, JJ.) MUTHUVEERAPPA CHETTY *v.* PUNUSWAMI CHETTY. **(1911) 2 M.W.N. 561=22 M.L.J. 68=13 I.C. 16=10 M.L.T. 477.**

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——S. 17—*Presumptive heir as guardian, if desirable.*

Usually, it is undesirable to appoint any one guardian of the person of a minor, who is the presumptive heir to the minor's property. (*White*, C. J. *and Sankaran Nair*, J.) KRISHNASWAMI CHETTY *v.* COTTAH MANGAMMAL. **10 I.C. 283=(1911) 1 M.W.N. 365**

——S. 17—*Considerations — Management of business—Purdanashin lady — Security — Remuneration.*

The mere fact that an applicant is a *purdanashin* lady is no ground for rejecting her claim to be appointed guardian of the property of a minor. Where however the minor's estate owns a big business which could not be managed by a woman of the status of the applicant without an assistant, that may be a ground for appointing another person as guardian. Where an appellate Court considers the advisability the appointment of a particular person as guardian it may take into consideration also the questions of the remuneration that will have to be paid to him as well as the security which he is likely to furnish. (*Kotwal*, A.J.C.) MT. RAJRANI *v.* BHAGWANDAS.
1922 Nag. 232.

——S. 17—*Paternal uncles as maternal uncles—Hindu Law*

The paternal uncles are, under the Hindu law preferential guardians to maternal uncles, but if the former claim an interest in the minor's property adverse to the minor, they are not entitled to the custody of the minor under the Guardians and Wards Act. (*Stuart*, J.C.) BAIJNATH *v.* EMPEROR. **1 O.L.J. 416=25 I.C. 840=15 C.L.J. 640.**

——S. 17—*Discretion of District Judge—Interference in appeal.*

The discretion vested in a District Judge acting under S. 17 of the Guardians and Wards Act is very wide and orders passed within the bounds of such discretion can rarely be interfered with by the High Court. (*Piggott*, A.J.C.) KANIZ JAFAR *v.* ZAQIA BEGAM. **11 I.C. 340=14 O.C. 103.**

——Ss. 17 and 19 (c)—*Welfare of minor—Natural right of father—Conversion to Islam from Hinduism—Effect.*

S. 19 recognises the natural rights of the father and is controlled by S. 17 according to which the paramount consideration is the welfare of the minor. A Hindu father's conversion does not operate to deprive him of the guardianship of his children by reason of Act, (XXI of 1850). Nor his conversion *per se* reason for the Court to declare the father unfit, for the Court cannot say that one religion is better than the other. (*Pratt and Crouch*, A.J, Cs.) SHEIK MAHOMED *v.* MR. RADHABAI. **47 I.C. 817=12 S.L.R. 14.**

——S. 17 (1)—*Welfare of minor.*

It was not for the benefit and welfare of the minor to take him out of the custody of his

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mother especially when the application for appointment of guardianship was made simply for the vindication of the applicant's right as paternal grandfather. (*Tudball and Ryves, JJ.*) SUDHIA *v.* MAKKA. **54 I.C. 418 = 18 A.L.J. 71.**

———**S. 17 (1) (2)**—*Scope of — Muhammadan Law—Guardianship for marriage.*

Though the Act enables the Court to appoint anybody as guardian, S. 17 (2) lays down Rules which bring the provisions of the Act into tune with those of the Mahomedan Law according to which the father has a preferential claim to be the guardian of his minor daughter's property. The Rules as to guardianship for marriage of a minor are governed exclusively by Mahomedan Law. (*Chatterjee and Newbould, JJ.*) HADISH BAPARI *v.* BOGAMULLA SHEIK. **38 I.C. 787 = 25 C.L.J. 551.**

———**S. 17 (1)**—*Mahomedan mother—Rights of.*

A Mahomedan mother is the proper guardian of her children under 7 years and she cannot be removed from such guardianship unless she is found guilty of gross and open immorality. (*Holmwood and Teunon, JJ.*) JANNA TUNNESSA BIBI *v.* HAFIZ-UD-DIN **10 I.C. 904.**

———**S. 17 (1) and (2)**—*Guardianship of the person of a minor—Preference among claimants—Presumptive heir ineligible.*

When the claims of distant relations to the guardianship of the person of a minor have to be compared there is no question of preference other than what arises from a consideration of the minor's welfare. The presumptive heir to the property of a minor is not a suitable person to be appointed guardian of his person as such a person stands to gain by the minor's death. 16 M.L.J. 357 ; 2 C.L.R. 583; 10 I C. 283, Ref. (*Spencer and Venkatasubba Rao, JJ.*) NARASAYYA *v.* VENKATAPPA. **44 M.L.J. 62 = (1923) M.W.N. 12 = 17 L.W. 92 = 1923 Mad. 369.**

———**S. 17 (1) and (2)**—*Friend of debtor to estate—Should not be appointed.*

Where the guardian appointed by the testator is a debtor of the estate and specific charges are made against him by the widow which may make it neeessary to call the guardian appointed by the will to account, it is advisable not to appoint as guardian any person on terms of friendship with such person. (*Kotwal, A.J.C.*) MT. RAJRANI *v.* MT. BHAGWANDAS. **1922 Nag. 232.**

———**Ss. 17 (1) and 19 (a)**—*Mahomedan Law — Minor boy and girl — Guardianship—Mother and Paternal uncle—Preference.*

Under S. 17 (1) of the Guardians and Wards Act the Court is bound to take the Mahomedan Law into consideration in deciding as to who is to be selected as a guardian for minor Mahomedan. The husband is the most unsuitable guardian for a girl who has not attained the age of puberty. It is desirable that the

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guardian of the person should also be the guardian of the property. Under the Mahomedan Law the mother is a preferential guardian over a paternal uncle of a boy who is under 7 years of age and even if he is above seven, the Court, which takes the place of a father, can appoint the mother in preference to the paternal uncle as the guardian. (*Batten, A.J.C.*) MAHAMAD KHAN *v.* SULTAN BEGAM. **43 I.C. 849.**

———**S. 17 (3)**—*Considerations—Wishes of minor.*

A boy aged 14 years and a girl aged 16 years, are old enough to form an intelligent preference, such preference is strongly entitled to consideration under S. 17 (3). 9 Mad. 391, Diss; 16 Bom. 307 ; 12 All. 213 ; 25 Cal. 881 ; 23 Cal. 290 ; 22 M.L.J. 247, Foll. (*Stanyon, A.J.C.*) BATOOLAL *v.* MRS. EKSTRAND. **12 N.L.R. 36 = 32 I.C. 977.**

———**Ss. 19 and 25**—*Application for guardianship by father is not competent.*

An application by a Hindu father under S. 19 of the Guardians and Wards Act is not competent. The application should be under S, 25 of the Act asking the Court to direct the return of the boy to the father. Under the Hindu Law the father is the natural guardian of his minor son and he can apply to the Court, if his ward leaves or is removed from his custody, for an order for the minor's return, and the Court will, if it is of opinion that it will be for the welfare of the ward to return to his guardian, make such an order. (*Macleod C.J. and Shah, J.*) BAI TARA *v.* MOHANLAL LALLUBAI. **24 Bom. L.R. 779 = 1922 Bom. 405.**

———**S. 19**—*Father, if can be appointed guardian.*

The Court has, subject to the explanations in S. 19 of the Act, no power to appoint a father the guardian of the person of his children and where the Court does so the order of appointment is without jurisdiction and can be called in question. (*Lindsay, J.C.*) MUSHAF *v.* MOHAMMAD FAWAD. **21 O.C. 194 = 48 I.C. 60 = 5 O.L.J. 616.**

———**S. 19** — *Scope of — Appointment of guardian—Father.*

Where the parties to a case are not European British subjects, S. 19 of the Guardians and Wards Act lays down in clear and unmistakable terms that the Court is not authorised to appoint or declare a guardian of the person of a minor whose father is living, unless that father is unfit to be a guardian. There is no reason to suppose that an application by the father himself was intended to be excepted from the provisions of the section. The view of the legislature presumably is that the father is the natural guardian and does not require appointment. (*Brown, A.J.C.*) RAMJAN KHAN *v.* MARIAN BIBI. **4 U.B.R. 146 = 1923 Rang. 120.**

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———S. 19 (b)—*Natural guardian living—Court whether can appoint another guardian—Minor absent.*

During the natural guardian's life, a Court cannot appoint another guardian under S. 19 unless in its opinion, the natural guardian is unfit, and since a guardian is appointed in the interests of the minor, it cannot appoint one, if the minor is absent and his interests are not considered. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANAIAH. **38 Mad. 807 = 41 I.A. 314 = 27 M.L J. 30 = 18 C.W.N. 1089 = 1 L W. 520 = (1914) M.W.N. 585 = 16 M.L.T. 165 = 20 C L J. 283 = 16 Bom. L.R. 625 = 24 I C. 290 = 12 A.L.J. 1155 (P.C.).**

———S. 19 (b)—*Father living—Appointment of guardian.*

When the minor's father is living no other guardian can be appointed, unless he is in the Court's opinion unfit for the appointment. (*Oldfield and Seshagiri Aiyar*, JJ.) SUBRAMANYA PILLAY *v.* AMMAYEE AMMAL. **2 L.W. 531 = 29 I C. 740 = (1914) M.W.N. 414.**

———S. 19 (b)—"*Father*,"—*Meaning of.*

"Father" in S. 19 (*b*) means father of a child born in wedlock and not the natural of putative father. Following Hindu and Mahomedan Laws the Guardian and Wards Act does not recognise the father as the guardian of his illegitimate child because the only point to be considered in appointing the guardian of a minor is his welfare. (*Fox*, C.J. *and Twomey*, J.) MA MYO *v.* MAUNG KYAN.

9 Bur. L.T. 205 = 36 I.C. 646 = 8 L.B.R. 415.

———S. 19 (c)—*Property of minor under Court of Wards—Application by husband for guardianship of person.*

Where the property of a minor is under the Court of Wards the Court cannot appoint or declare even the husband of the girl as the guardian of her person. (*Hayward*, J.C.) HAJI MAHOMED BARDIO. *In re.* **24 I C. 944 = 7 S.L.R. 199.**

———Ss. 20, 27 and 33—*Guardian dealing with ward's money—Investment—Duty to account for profits—Breach of trust.*

A guardian stands in a fiduciary relation to his ward and is not allowed to make any profit out of his office; and he is bound to deal with the property of the ward as carefully as a man of ordinary prudence would do. If the ward's moneys were used by the guardian in his business, the latter would be bound to account for the profits he had made out of the use of that money or could have made but for his gross or wilful default. Every plain neglect of duty by a guardian amounts to a breach of trust and he must compensate his ward for any loss occasioned thereby. *Prima facie* it is the duty of a guardian to invest moneys belonging

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to his ward and S. 33 of the Act provides means by which a guardian may obtain assistance of the Court in his dealings with his ward's funds. (*Broadway and Abdul Raoof*, JJ.) LABHU RAM *v.* BHAGMAL. **54 I.C. 926 = 157 P.R. 1919.**

———S. 21—"*Guardian*"—*Meaning—Minor step-mother if can be appointed*—Purdanashin *lady—Appointment as guardian.*

There is no inflexible rule of law that a *purdanashin* lady should not be appointed guardian of the person and property of her infant son. She should not be appointed where her appointment would not be to the advantage of the infant. The word "guardian" in S. 24 refers to the guardian of the person of the minor. A minor step-mother is competent to act as guardian of the person of her infant step-son. 5 Bom. L.R. 542; 3 Bom. 2, Rel. (*Mookerjee and Beachcroft*, JJ). SUNDAR MONI DAI *v.* BANG SIDHAR PATANIK. **18 C.W.N. 160 = 16 I.C. 900 = 17 C.L J. 405.**

———S. 24—*Marriage of minor—Court's power to restrain.*

The Court is not bound to assume responsibility for a minor's marriage but the Court may restrain a marriage if it is unsuitable even though the guardian has given his consent. But the Court will not interfere when the minor becomes competent under her personal law to contract a marriage. (*Piggott and Walsh*, JJ.) MAHOMED FASAHAT ULLAH *v.* TAHAIRA BIBI. **40 I.C. 136.**

———S. 24—*Marriage of minor—Court's duty.*

It is no part of a Court's duty under the Guardians and Wards Act to assume direct responsibilities for the marriage of a minor girl. The Court must leave the matter to be settled by the parties themselves and decline either to sanction or probibit the marriage. 22 Bom. 509. Ref. (*Kensington*, C.J.) LAL SINGH *v.* SHAM LAL. **98 P R. 1914 = 27 I.C. 381 = 201 P.L.R. 1915.**

———Ss. 24 and 43—*C. P. C. (Act V of 1908) S. 115—Order not warranted by Act—Revision.*

Where a District Court purporting to act under the Guardians and Wards Act made an order directing a person to pay a certain sum to the guardian of minor on a petition presented by the latter asking the Court for permission to give the minor in marriage and also for directing that other person to pay a fixed sum to the guardian. *Held*, that the order of the Judge directing amount to be paid was not warranted by the section of the Act and could be set aside under S. 115 of the C. P. C. (*Abdur Rahim and Spencer*, JJ.) KOMANA SOMAKKA *v.* KODIDALA PEDDA RAMIAH. **36 Mad. 39 = (1911) 2 M.W N. 519 = 13 I.C. 251 = 22 M.L.J. 193.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 24.

——S. 24—*Marriage of ward—Power of Court.*

A District Judge is competent to sanction the marriage of a minor girl under the guardianship of one appointed by the Court with a particular bridegroom. Under the Shia law such a minor girl who has attained puberty and the age of discretion has an absolute right to marry a man of her choice subject always to the District Judge's superintendence and veto. (*Mullick and Atkinson*, JJ.) ABBASI *v.* MUSTAPA BEGUM. **52 I.C. 998.**

——S. 25—*Welfare of minor—Enquiry—Practice.*

In deciding the question of a custody of a minor the welfare of the minor alone is to be considered. All that the Court has to do is to satisfy itself, what is best in the interests of the minor and is not bound to make a protracted enquiry. (*Scott-Smith*, J.) JUGGO KAUR *v.* DURGA DAS. **209 P.L.R. 1914 = 27 I.C. 257 = 150 P.W.R. 1914.**

——S. 25—*Father's right to custody of minor child.*

The father has a right to custody of a minor child. (*Oldfield and Venkatasubba Rao*, JJ.) SHRI RAJA BOMMADEVARA SATYANARAYANA *v.* NARASAYAMMA. **18 L.W. 173 = 1924 Mad. 45.**

——S. 25—'*Custody*',—*Meaning of—Separate suit by guardian, if lies.*

The word 'custody' in S. 25 includes both actual and constructive custody. A guardian appointed under the Guardians and Wards Act is only entitled to apply under the act for the custody of the minor and cannot bring a separate suit. A guardian who has not actual custody can apply for an order for return to custody when the person who has actual custody repudiates to the guardian's knowledge the right of the guardian to the actual or legal custody of the minor. (*Sadasiva Aiyar and Napier*, JJ.) MOHIDEEN IBRAHIM NACHI *v.* MAHOMED IBRAHIM SAHIB **39 Mad. 608 = 33 I.C. 894 = 30 M.L.J. 21.**

——S. 25—*Custody, applications for conditions.*

Where a ward leaves or is removed from the custody of a guardian of the person it is open to the guardian to apply under S. 25. In such a case it is not essential that there should be a certificated guardian before such an application. (*Heaton and Shah*, JJ.) DAYABHAI RAGHUNATH DAS *v.* BAI PARVATI. **39 Bom. 438 = 28 I.C. 597 = 17 Bom. L R. 332.**

——S. 25—"*Guardian and Custody*", *meaning of—Delegation of enquiry by Court—Validity.*

The expression "guardian" in S. 25 of the Act is not confined to statutory guardians appointed under the Act but includes any

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person having the care of the person of a minor or of his property or both of his person and property. Such a person need not necessarily be the *de facto* guardian of the minor. The "custody" referred to in S. 25 of the Act includes both the actual and constructive custody. The duty of enquiry under that section of the case is cast upon the Court and cannot be delegated (*Lindsay*, J.C.) MUSHAF *v.* MOHAMMAD JAWAD. **21 O C. 194 = 48 I.C. 60 = 5 O L J. 616.**

——S. 27—*Unauthorised act of previous guardian—Ratification.*

A guardian appointed under the Guardians and Wards Act cannot ratify the unauthorised acts of a former guardian; this can be done by the minor alone on attaining majority. (*Mittra*, A.J.C.) SHANKAR *v.* GOVINDA. **54 I.C. 311.**

——S. 27—*Acknowledgment of barred claim.*

It is unwise on the part of the guardian to admit that his wards were liable for the debt when the debt could not be legally recovered owing to the lapse of time. (*Lindsay*, A.J.C.) BANKEY LAL *v* SWAMI DAYAL. **2 U P.L.R. (J C.) 82 = 7 O L.J. 207 = 56 I C. 328 = 23 O.C. 27.**

——S. 27—*Rent due by guardian in respect of property in hands of mortgagee—Liability of minor to pay rent.*

There is nothing in S. 29 to prohibit a lease being taken by the guardian of property belonging to the minor from a person holding the same under a mortgage made for legal necessity. The lease, while it imposes upon the minor the liability to pay rent brings with it, a corresponding gain and the transaction is, if beneficial to the minor, of a nature within the competence of the guardian binding on the ward. (*Kanhaiya Lal*, J.C.) GUR DIN *v.* DURGA DIN. **54 I C. 19 = 2 U.P L.R. (J.C.) 52.**

——S. 27—*Remission of rent by guardian.*

A guardian has a discretion under S. 27 to allow a remission of rent to the tenant on failure of rain or other source of irrigation though the tenant has no legal right to claim remission. The ward not having repudiated the Guardian's Act must be deemed to have ratified it. 28 I.C. 5. (*Fawcett*, J.C. *and Crouch*, A.J.C.) GHULAM MAHOMAD *v.* SHAHEB SINGH. **28 I.C. 5 = 8 S.L.R. 222.**

——S. 29—*Contract for sale by certificated guardian—Suit for damages for breach of.*

A contract by a certificated guardian on behalf of the minor, for the sale of immoveable property with the sanction of the Court, is a valid contract and a suit for damages for the breach thereof is maintainable. 39 Cal. 232, P.C., Dist. (*Ryves and Lyle*, JJ.) BABU RAM *v.* SAIDUNISSA. **35 All. 499 = 20 I.C. 916 = 11 A.L.J. 783.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 29.

———**Ss. 29 and 30**—*Sanction—Sale long after, invalid.*

A transfer 15 years after the sanction granted by the Dt. Judge, cannot be held to be in pursuance of the sanction. (*Griffin and Chamier*, JJ.) SHAMINATH *v.* LALJI.
35 All. 150 = 18 I.C. 251 = 11 A.L.J. 107.

———**Ss. 29 and 30**—*Transfer without sanction of Court—Sanction obtained under O. 21, R. 83, C.P. Code—Effect of.*

The certificated guardian of a minor sold the property of the minor, which had been attached, with the sanction of the Court under O. 21, R. 83, C.P. Code, but without obtaining sanction under S. 29 of the Guardians and Wards Act. Subsequently the certificated guardian sold the property with the sanction of the Court under S. 29 of the Guardians and Wards Act. *Held*, that the first sale was voidable at the option of the subsequent transferee but the subsequent transferee can get back the property only on his reimbursing the prior transferee whose money had benefited the minor. 3 C.L.J. 260, Ref. Under S. 30 of the Guardians and Wards Act disposal of immoveable property by a guardian in contravention of Ss. 28 and 29 is voidable and could be set aside in a proper proceeding. Where therefore a person seeks to avoid it, he is in the position of a person who seeks equity and must do equity. The sanction obtained under O. 21, R. 83, C.P.C. does not cure the defect arising on account of the want of sanction under S. 29 of Guardians and Wards Act. The scope of an enquiry under S. 29 of the Guardians and Wards Act is entirely distinct from the scope of an enquiry under O. 21, R. 83, C.P. Code. When an application is made under S. 29 of the Guardians and Wards Act to a District Judge to sanction a proposed alienation, the matter to be considered is the benefit of the infant. When an application is made to an execution Court to sanction an intended transfer under O. 21, R. 83, C.P.C., the matter for enquiry is the protection of the execution creditor. Compliance with the provisions of O. 21, R. 83, C. P. Code, does not render unnecessary the fulfilment of the requirements of S. 29 of the Guardians and Wards Act in a case which falls within the scope of both these provisions of the law. (*Mookerjee and Cuming*, JJ.) DIJENDRA MOHUN SARMA *v.* MANORAMA DASI. **49 C. 911 = 36 C.L.J. 326 = 28 C.W.N. 57 = 1922 Cal. 150.**

———— **S. 29**—*Lease by Court guardian for 7 years—Sanction of Court not obtained—Lease in accordance with compromise sanctioned by Court—Validity.*

A Court guardian granted a lease of the minor's properties for a term of 7 years without obtaining the sanction of the Judge under S. 29 of the Act; but the lease was in accordance with a compromise entered into with the sanction of the Court. *Held*, as the sanction of the compromise by the Court under O. 32, R. 7, C. P. Code, signified that the compromise was for the benefit of the minor, which is also what S. 29 of the Guardians and Wards Act signifies, the lease was valid. (*Stephen and Mullick*, JJ.) ABDUR RASHID *v.* SHEIKH KHANDKAR. **68 I.C. 997 = 35 C.L.J. 206.**

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———— **Ss. 29 and 30**—*Manager of joint Hindu family—Appointed guardian—Mortgage by validity.*

The karta of joint Hindu family who is appointed guardian of minor member of the family under the Guardians and Wards Act comes under the control of the Court and cannot mortgage the minor's share as karta. If the guardian mortgages the minor's property without Court's sanction the minor will be equitably liable only if it is shown that the debt was actually applied for the benefit of the minor. (*Chaterjee and Newbould*, JJ.) UPENDRA NATH BISHWAS *v.* SHIB KUMARI DEBI.
52 I.C. 616 = 23 C.W.N. 634.

———— **S. 29**—*Mortgage by guardian without sanction of Court—Sale with sanction—Mortgagee's right.*

A mortgage by a guardian, without sanction of the Court, cannot be enforced against a purchaser of the mortgaged property with sanction of the Court, but the mortgagee is entitled to a decree against the guardian personally for the mortgage amount. (*Fletcher and Shamsul Huda*, JJ.) RAJANI KANTA ROY *v.* MANMATHA NATHA NANDI. **46 I.C. 665.**

———— **S. 29**—*Contract by guardian to sell—Liability of ward.*

Where a guardian contracted to sell the ward's property, with the sanction of the Dt. Judge at a price higher than that fixed in the sanction is valid and enforceable against the minor. 39 Cal. 232 (P.C.), Dist. (*Chatterjee and Newbould*, JJ.) HELLALUDDIN MIA'S WIFE *v.* JANAKI NATH SIRCAR. **40 I.C. 490 = 22 C.W.N. 477.**

———— **S. 29**—*Sale by guardian with Court's permission*—Pardanashin *lady—Fraud—T. P. Act, S. 41*—Bona fide *purchaser for value.*

A sale by a guardian of the Wards property with the permission of the Court transfers a good title to the vendee whether the guardian is a *pardanashin* lady or otherwise, and the mere fact that the guardian is a female does not raise a presumption of fraud practised on the Court. A purchaser from such a purchaser for consideration is a *bona fide* purchaser for value without notice of fraud. (*Fletcher and Richardson*, JJ.) JADU NATH ACHARYA *v.* TARAK CHANDRA CHATTERJ **23 I.C. 810.**

———— **Ss. 29 and 30**—*Mortgage in excess of sanction voidable.*

A mortgage of the minor's land in excess of that, for which sanction was granted to the guardian is voidable at the minor's option especially when the mortgagee knew the terms

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of the sanction. 16 C.W.N. 715, Dist. (*Stephen and Halmwood, JJ.*) HRIDOYNA *v.* SHRI NATH CHAKRAVART 19 I.C. 624.

——S. 29—*Letter reducing rent—Lease less than five years—Validity.*

Obiter.—S. 29 does not forbid the passing of a letter by a guardian reducing the rent payable under a lease for a term less than five years. (*Sharfuddin and Coxe, JJ.*) GANENDRA MOHAN CHOWDHURY *v.* GYA PRASAD TEWARI. 16 I.C. 52.

——Ss. 29 and 33—*Transfer by guardian without Court's permission—Avoidance—Defence—Restoration of benefit.*

A mortgage by the guardian of a minor without the Court's permission is not void but only voidable by the minor and the latter can, without bringing an action to set it aside plead his intention to rescue it when an action is brought to enforce it but he must restore any benefit he might have received thereunder. (*Jenkins, C. J. and Chatterjee, J.*) HEMCHANDRA *v.* LALIT MOHAN KAR.
16 C.W.N. 715=14 I.C. 515=16 C.L.J. 537.

——Ss. 29 and 30—*Sale without permission of Court.*

A sale by a guardian without the Court's permission is voidable under Ss. 29 and 30 of the Act even though the transaction was for the minor's benefit and a perfectly honest one. (*Coxe, J.*) KARNIKHAN *v.* SALAMUDDI.
18 I.C. 594.

——Ss. 29, 30 and 31—*Sale by certified guardian with permission of the Court—Fraud on Court—Title of vendee.*

A sale by a certificated guardian of the prorty of a ward with the permission of the Court, transfers good title to the vendees unless the Court's permission was obtained by fraud. (*Le Rossignol and Martineau, JJ.*) MUSSAMMAT RAHUNI *v.* MUSSAMMAT HUSSAIN BIBI. 52 I.C. 841=73 P.R. 1919.

——Ss. 29 and 30—*Alienation by certificated guardian contrary to S. 29—Right to avoid.*

A certified guardian under the Guardians and Wards Act is not free from the limitations imposed by S. 29 of the Act because he or she is also an actual guardian. S. 30 of the Act gives a minor a right to avoid a sale made in a contravention of S. 29 even if the whole of the sale price was spent in benefiting him. (*Chevis, J.*) SHIB LAL *v.* SHAM DAS.
61 P.R. 1918=110 P.L.R. 1918=47 I.C. 353=162 P.W.R. 1918.

——S. 29—*Applicability — Transfer by guardian ad litem.*

S. 29 of the Act does not apply to transfers of property made on behalf of minors by their

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guardians *ad litem* and no sanction of the Court is necessary. (*Shah Din and Wilberforce, JJ.*) MT. BARKAT *v.* MT. JAMILA. 44 I C 534=61 P.W.R. 1918.

——Ss. 29 and 30—*Transfer of Property without sanction—Liability of minor—Duty to restore benefit.*

The restrictions on the powers of a guardian appointed under the Guardians and Wards Act can be enforced only to such extent as is laid down by the provisions of that Act 45 I.A. 73 (P.C.) Dist. A decree directly affecting the minor's immoveable property cannot be passed in respect of a transaction entered into by a certificated guardian on behalf of his ward without the sanction of the District Judge but a simple money decree can be passed against him to the extent to which he is found to have benefited by the transaction. (*Kanhaiya Lal and Lyle, A.J.Cs.*) LALA PURUSHOTAM DAS *v.* NAZIR HUSAIN. 54 I C. 846=6 O.L.J. 668.

——S. 30—*Order under—Not appealable.*

An order under S. 30 of the Guardians and Wards Act is not appealable. (*Piggott and Walsh, JJ.*) LACHMI PRASAD *v.* BALDEO DUBE. 44 A. 458=20 A.L.J. 390=1923 All. 14 (1).

——S. 30—*Hypothecation of minor's property without permission of District Judge—Voidable—Restitution of benefit.*

Under S. 30, the hypothecation of immoveable property of a minor by his guardian without the permission of the District Judge is voidable at the instance of the minor, but if the amount for which an hypothecation of minor's property was made, was received for the benefit he cannot avoid the hypothecation without a refund of the money by which he has been benefited. 22 Mad. 289, Foll. (*Banerji, J.*) NUR BUKSH *v.* RUKUM SINGH.
11 I.C. 764=8 A.L.J. 754

——S. 30—*Guardian under Act of 1864—Alienation by, after Act of 1890 without sanction—Validity.*

A guardian under Act, 1864, cannot validly alienate the ward's property without sanction after the Act of 1890 came into force. Alienation without sanction is void. (*Scott, C.J. and Beaman, J.*) SHANKERBHAI KASHIBHAI *v.* RAISINAGI JASWANT SINGI.
42 I.C. 908=19 Bom. L.R. 855.

——S. 30—*Transfer of minor's interest in decree—Judgment-debtor, if can impugn.*

A judgment-debtor cannot object to the transfer of a minor's interest in the decree made by his certified guardian without the leave of the District Court so as to prevent its execution by the transferee. (*Beachcroft and Walmsley, JJ.*) JAGBANDHU PAUL HALADHAR PAUL. 41 I.C. 269=27 C.L.J. 110.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 30.

——S. 30—*Mortgage by certified guardian without Court's sanction—Avoidance—Restoration of benefit.*

When a certified guardian of a minor executed a mortgage of the minor's property without the District Judge's sanction therefor, the minor desiring to avoid the transaction must first restore all the benefits which he has in fact received and the mortgagee on his part is bound to show the extent of the application of the money for the benefit of the estate of the minor. When in the case of a mortgage bond by a certified guardian, the rate of interest was Rs. 7-8-0 with annual rents which rate was not sanctioned by the Court it was held that the mortgagee was entitled to not more than 12 per cent. simple interest. (*Chatterjee and Richardson*, JJ.) MANSRAM DATT *v.* AHMAD HUSAIN. **37 I.C. 380=21 C.W.N. 63.**

——S. 30—*Loan taken by guardian—Avoidance—Restoration of benefit.*

Where there has not been a sanction of the District Judge but it is clear that a guardian could not have succeeded in borrowing money unless he paid interest and the loan was in the interests and for the benefits of the minor under S. 30 of the Guardians and Wards Act the minors could be allowed to go back on the agreement only on condition that they on their part restored all benefits which they had received under it, *i.e.*, that it is the principal amount and a reasonable rate of interest thereon (9 per cent. reasonable). A guardian's agreement to pay interest and to make it a charge on proof though not sanctioned by the District Judge, is not void but only voidable under S. 30 of the Guardians and Wards Act at the instance of the minor. (*Rattigan and Rossignol*, JJ.) MAHAMMED ISMAIL *v.* GOUR PRASAD. **34 I.C. 916=24 P.R. 1916.**

——S. 30—"*Any other person*"—*Whether includes creditor injuriously affected.*

The words "any other person affected thereby" in S. 30 do not include a creditor whom a transfer of property might injuriously affect. (*Rattigan and Scott-Smith*, JJ.) LALJIDAS *v.* CHAITRAM. **75 P.R. 1914=104 P.L.R. 1914=22 I.C. 829=75 P.W.R. 1914.**

——Ss. 31 and 47—*Sale of minor's properties with Court's sanction—Re-sale if can be ordered—Duty of Court.*

A District Judge giving an unconditional sanction to a sale of a minor's property by a guardian cannot after its execution and registration order a re-sale thereof. A District Judge should look after the interest of minors and see that guardians do their duty and file proper accounts and furnish security at the time of their appointment. (*Richards*, C.J. *and Banerji*, J.) PREMSUKHDAS *v.* LACHAMAN TEWARI. **46 I.C. 542.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 31.

——S. 31—*Permission—When to be granted—Inquiry—Necessity for.*

S. 31 of the Guardians and Wards Act requires that permission to a guardian to do any of the acts mentioned in S. 29 shall be granted only in case of necessity or advantage to the ward. The order granting the permission should also recite the necessity or advantage. But though no inquiry is instituted, the order does not become void. (*Mookerjee and Rankin*, JJ.) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDHURY. **38 C.L.J. 213=1924 C. 420.**

——S. 31—*Mortgage by guardian—Order of Court—Duty of creditor.*

Where a District Judge after being satisfied by *ex parte* enquiry, sanctions a mortgage on behalf of a minor, the lender if he acts *bona fide* need not go behind the order or see to the application of the money unless he is a party to any fraud practised for obtaining sanction. (*Chatterjee and Newbould*, JJ.) AKHIL CHANDRA SAH *v.* GOURI SHANKER SHAH. **41 I.C. 302=21 C.W.N. 864.**

——S. 31—*Sanction of Court—Revocation of—Grant to guardian of power to sell—Power of Court to stop sale.*

Even if a Court has given sanction under Ss. 29 and 31 (1), it is not beyond the power of that Court to intervene and stop that sale if it finds it would be detrimental to the ward's interest. The Legislature does not intend that a Court should give unfettered power to a guardian to sell an estate without fixing at least an approximate price. (*Johnstone*, C. J. *and Rattigan*, J.) SULTAN SINGH *v.* HASHMAT ULLAH. **109 P.R. 1915=119 P.W.R. 1915=29 I.C. 804=38 P.L.R. 1916.**

——Ss. 31 and 48—*Sale of minor's property—Sanction of Court — Misrepresentation and fraud of guardian—Suit to set aside sale by minor—What must be shown.*

A suit to set aside a sale of a minor's property made on his behalf during his minority with the sanction of the District Judge by his certified guardian, cannot be maintained successfully unless it can be shown that the Judge's order was illegal or that the sale was not in conformity with that order, or that the proceedings were vitiated by fraud on the part of the purchaser. Fraud and misrepresentation on the part of the guardian does not render the sale illegal unless it is shown that the purchaser was privy to the fraud or at least was aware of it. Therefore, a *bona fide* purchaser is sufficiently protected by the fact that the sale had the sanction of the District Judge. 5 Cal. 363; 22 Cal. 535; 31 Bom. 590, Expl. (*Kanhaiya Lal and Daniels*, A.J.C.) SATRENHAN SINGH *v.* GANGA BAKSH SINGH. **6 O.L.J. 39=49 I.C. 375=1 U.P.L.R. (J C) 24.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 31.

———**S. 31 (2)**—*Sanction cannot cure inherent defects—Suit by minor to set aside the sale—Onus.*

Per *Spencer*, J.—Sanction of court given under S. 31 of the Guardians and Wards Act will not cure inherent defects that may exist in a sale by a guardian. It is only *prima facie* evidence that the transaction was a good one and the minor may at any future time have it set aside on the ground that it was fraudulent or improper, the burden of proof being in the first instance on the minor. Per *Ramesam*, J.—The true rule as to the effect of the sanction is that it throws the onus on the minor to show that the alienation was improperly made contrary to the usual rule requiring the purchaser to establish the validity of the alienation or that he acted with due care and caution after making such enquiry as an honest and prudent man would make. It is not necessary for the minor seeking to impeach the transaction to make out fraud on the part of the purchaser. Per *Spencer*, J.—Where the order granting sanction for a sale by a guardian did not recite the necessity for the same but simply ran thus :—"In the circumstances, the sale of 9 acres in full satisfaction of the mortgage debt is sanctioned," *held*, that the order did not comply with S. 31 (2) of the Act. (*Spencer and Ramesam*, JJ.) NALLAKA VENKATASWAMI *v.* RUGAM VEERAMMA.

45 Mad. 429 = 42 M.L.J. 333 = 15 L.W. 373 = (1922) M.W.N. 357 = 1922 Mad. 135.

———**S. 31 (2)**—*Permission to sell—Necessity not mentioned—Effect—Section imperative.*

S. 31 (2) is mandatory and not merely directory. An order which failed to recite the necessity for the advantage of, the transfers is not a legal order and cannot be pleaded as sufficient sanction for a sale by the guardian. (*Lindsay*, J.C.) BANKEY LAL *v.* SWAMI DAYAL.

23 O.C. 72 = 7 O.L.J. 207 = 56 I.C. 328 = 2 U.P.L.R. (J C) 82.

———**S. 31 (3) (a)**—Bona fide *sale of minor's property—Conditions precedent and subsequent.*

Where the District Judge acting under the Guardians and Wards Act empowers the guardian to sell a property of the minors for an alleged debt of theirs and further directs him to put in the bonds after these have been satisfied and so endorsed by the creditor, it does not follow that non-compliance with the latter direction makes the sale invalid if actully carried out and the vendee has all along been in possession of the purchased property. Where the same property is held partly by adult co-sharers and partly by minors, the very fact that the minor's share was sold for a price a little over that for which the shares of adult co-owners was sold goes to indicate the *bona fides* of the sales of the shares of the minors. (*Chitty and Richardson*, JJ.) DYAM KHAN *v.* SARAT CHANDRA DEO. **26 C.W.N. 218.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 34.

———**S. 31 (4)**—"*Any person*," *meaning of.*

The words "any person" in S. 31 of Act VIII of 1890 means any person interested in an application made on behalf of a minor not merely his friends or relatives. (*Abdur Rahim and Sundara Iyer*, JJ.) RAJA VENUGOPAL BAHADUR *v.* THIRUMAL KANDAMA.

35 Mad 743 = (1911) 2 M.W.N. 165 = 10 M.L.T. 259 = 11 I.C. 946 = 21 M.L.J. 885.

———**S. 32**—*Interest in a trust—Protection by appointment of guardian.*

A minor's interest in a trust can be protected, and the benefits thereof secured to the minor, by the appointment of a guardian of the property of the minor in respect of the interest. (*Piggott and Walsh*, JJ.) KHATUN BEGAM *v.* EJAZ AHMAD. **39 All. 288 = 37 I.C. 885 = 15 A.L.J. 132.**

———**Ss. 32 and 43**—*Order of suspension—Guardian—Curtailment of powers of.*

Until the guardian is actually removed or discharged he remains a guardian though with curtailed powers and the Court has authority under the Act to pass such orders as are necessary for the protection of the minor's property. An order of suspension of the guardian can be passed by the Judge under S. 32. (*Beachcroft and Walmsley*, JJ.) URMILA SUNDARI DASI *v.* RATI KANTA SAHA.

40 I.C. 397.

———**S. 34**—*Marriage of minor female—Sanction of Court—Application by guardian—Opposition of relatives.*

Once a guardian is appointed under the Guardians and Wards Act, any application for the marriage of the minor by the guardian must be considered from the point of view of benefit to the minor, and any relation that might be entitled to be heard on the application will be heard ; but such opposition must be considered at its true value and cannot be considered as an absolute bar to the Court giving sanction to the marriage. (*Macleod*, C.J. *and Shah*, J.) GANU GOPAL SONAR *v.* DATTATREYA LAXMAN POTDAR. **24 Bom. L.R. 845 = 1922 Bom. 335.**

———**Ss. 34, 35, 45**—*Attachment of property of guardian is improper.*

The Court has no power to attach the property of the guardian or his surety for the purpose of realising the balance. S. 35 of the Act provides the remedy for the realisation of the amount due from the guardian. Ample powers are also given under S. 45 of the Act to the District Judge. (*Abdul Raoof*, J.) RADHAKISHAN *v.* KHUSHI RAM.

1923 Lah. 506 (1).

———**Ss. 34 and 39**—*Appointment of guardian does not become effective until security is furnished.*

GUARDIANS AND WARDS ACT (VIII of 1890), S. 34.

An order appointing a person as guardian though appealable as soon as it is made, does not become effective or entitle the guardian to act as such, until he has furnished security. Failure to furnish security is a ground for removal of the guardian. (*Harrison*, J.) MT. KHUSAL DEVI *v.* SUKH DIAL. **71 I.C. 572.**

——**Ss. 34 and 37**—*Direction to guardian to deposit money due to minor—Not appealable.*

Where a guardian is directed to deposit in the Court the money due to the minor there is no appeal against the order but it may be corrected on revision for proper reason. (*Abdul Raoof*, J.) RADHA KISHEN *v.* KHUSHI RAM. **67 I.C. 309.**

——**Ss. 34 and 35**—*Surety bond—Right to sue—Assignment by Court—Breach of the conditions of the bond—Remedy—Procedure—Limitation.*

The Court is the obligee under a bond executed by sureties under S. 34(*a*) of the Guardians and Wards Act and can alone sue on the bond in the absence of an assignment in due form of law. The fact that the principal bond executed by the guardian is lost would not prevent the bond being duly assigned. Where there has been no order of the Court directing the guardian to exhibit accounts to pay or apply the balance found due under S. 34, Cls. (*b*) to (*e*) of the Guardians and Wards Act there is no breach of the conditions of the bond and a suit on the bond assigned by the Court is not maintainable. *Obiter:*—In the case of bonds under the Guardians and Wards Act the proper procedure is to get an order to pay against the guardian under S. 34 (*d*) or a decree against him, and if he fails to satisfy the order or decree, then to sue the sureties in respect of this breach as to which there will be no defence. The period of limitation is that prescribed by Art. 68 of the Limitation Act except where the bond charges immoveable property. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) KRISHNA CHETTIAR *v.* VENKATACHELLA CHETTIAR. **42 Mad. 302=36 M.L.J. 114=25 M.L.T. 229=(1919) M.W.N. 468=49 I.C. 587=9 L.W. 278.**

——**S. 34**—*Appointment of guardian on condition of furnishing security—If restricts Court's general powers to impose conditions—If ultra vires.*

S. 34 does not deprive the Court of its general power to impose conditions on guardians and so the appointment of a guardian conditional on his furnishing security is not *ultra vires*. (*Ayling and Seshagiri Iyer*, JJ.) SUBBA NAICK *v.* RAMA AIYAR. **40 Mad. 775=5 L.W. 261=37 I.C. 892=(1917) M.W.N. 426.**

——**Ss. 34 and 47**—*Order fixing amount under S. 34 (e)—Appeal.*

No appeal lies from an order under S. 34 fixing the amount to be applied for the maintenance, education and advancement of the ward and the persons depending on him. (*Oldfield and Napier*, JJ.) GOPAMMAL *v.* SRINIVASA IYENGAR. **27 I.C. 921=28 M.L.J. 96.**

——**Ss. 34(a) and 43**—*Order appointing a person guardian subject to his furnishing security within a time—Failure to furnish—Penalty.*

Where a person has been appointed guardian of a minor subject to his furnishing security and he fails to furnish security within a certain period he nevertheless renders himself liable to penalty provided for in S. 45 of the Act. (*Piggott and Walsh*, JJ.) JADDO TEWARI *v.* BARAM DEO SINGH. **51 I.C. 88=17 A.L.J. 377.**

——**Ss. 34 (a) and 39**—*Failure to furnish security—Supersession of guardian.*

The District Court can supersede a guardian if he fails to furnish security within the fixed time. (*Beadon*, J.) BUTA *v.* MUSAMMAT BEGAM. **45 P.W.R. 1913=19 I.C. 609=192 P.L.R. 1913.**

——**S. 34 (b)**—*Inventory—Sum to be allowed for minor's maintenance.*

It is essential that when appointing a guardian for the estate of a minor the Court should direct the guardian to file an inventory or list of minor's property in Court, and should allow a maximum sum for the maintenance, education and advancement of minor, which sum should never be exceeded without the leave of the Court. (*Richards and Tudball*, JJ.) LACHMANDAS *v.* RAMDAI. **10 I.C. 243.**

——**Ss. 34 (c) and 41 (3)**—*Minor attaining majority—Power of District Judge to review accounts—Right of minor.*

A District Judge who has appointed a guardian and directed him to file accounts has to look into those accounts from time to time during the minority but when the minor has attained majority there is no obligation on him to review the account or direct the guardian to render the accounts afresh. But he has power to direct the ex-guardian to hand over possession of all papers and accounts to the ex-minor who can take such steps as he might be advised. (*Richards*, C.J. *and Bannerji*, J.) MAHOMED KHASIM HOOSAIN *v.* AHMAD HOOSAIN. **39 I.C. 175.**

——**S. 34 (c)**—*Accounts—Lump sum in lieu of rent—Agreement with mother of ward by guardian for exoneration from liability, the ward managing properties himself—If binding on ward.*

Where the guardian of a ward, to save himself the cost of appraising rents, agrees to pay a stipulated sum annually as the profits of the estate he is bound to take good years with bad, and if, in any year, the collections are less, the

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188 is his, and not the ward's. An agreement by a guardian with the mother of his ward that, in consideration of the ward being allowed to manage the estate himself, the guardian would be indemnified against any suit for rendition of accounts is not binding on the ward. Even though annual accounts are passed by the Judge the guardian will not be relieved from his responsibilities. (*Kanhaiya Lal and Daniels*, A.J.Cs.) PARTAB SINGH *v.* KHURRAM SINGH. **53 I.C. 75=6 O.L.J. 407.**

———**Ss. 34 (d), 47 and 48**—*Order directing guardian to pay money — Examination of accounts—If appealable.*

An order under S. 34 (*d*) which is final under S. 48 directing the guardian of a ward to pay a certain sum of money as balance due from him is not appealable, but it would be open to examination by the High Court on the revision side. (*Broadway*, J.) RAM JAS *v.* CHANI.
4 Lah. L J. 272=1923 Lah. 89 (1)

———**S. 34 (d)**—*Accounts filed in Court—Presumption of correctness — Guardian — Reimbursement—Right to.*

A guardian who is spending more than the income of the ward's estate upon the ward is not entitled to recover the excess personally from the ward. Accounts filed by the guardian into the Court and checked by it are presumed to be correct. (*Lindsay*, J.C.) GOPAL *v.* SARJU
45 I.C. 599=21 O.C. 74.

———**S. 34 (e)**—*Court can ask guardian to apply income for maintenance.*

Under S. 34 (*e*) of the Act the District Judge has power to direct the guardian to apply for maintenance of the ward such portion of the income of the property of the ward as the Judge from time to time sees fit to direct. (*Shah Din*, J.) NAJABAT ALI *v.* MEHTAB BIBI. **34 P R. 1912=96 P.W.R. 1912=14 I.C. 789=137 P.L.R. 1912.**

———**Ss. 34 (e) and 36**—*Order directing a guardian to pay a sum of money to petitioner, if executable as a decree—C. P. Code, S. 2 (14).*

An order under S. 34, Cl. (*e*) directing the guardian of a ward to pay a certain sum of money to another is not an order under S. 2(14) C.P.C., and is, therefore, not executable as a decree. 36 Mad. 39, Foll. (*Spencer and Srinivasa Iyengar*, JJ.) PARVATHI AMMAL *v.* CHOKKALINGA CHETTY. **41 Mad. 241=(1917) M.W.N. 602=41 I.C. 241=6 L.W. 526.**

———**Ss. 35, 36**—*Suit against representation of guardian—Maintainability.*

A suit for accounts by a ward against his late guardian or his representatives, if it is proved that his property had gone into their hands, is maintainable. (*Shah and Crump*, JJ.) NARA-

GUARDIANS AND WARDS ACT (VIII of 1890), S. 39.

YANA BALAJI NAGARKAR *v.* KASHIBA KASHEO DANDNAIK. **22 Bom. L.R 633=53. I.C. 213=44 B. 852.**

———**S. 36**—*Suit against guardian—Leave of the Court obtained subsequent to suit—Effect.*

A suit brought against the guardian of the property of a minor under S. 36 is maintainable though the leave of the Court is obtained subsequent to the filing. (*Macleod*, C.J. *and Heaton*, J.) MAINHARI TARDI *v.* SHANKAR MORU TARDI. **22 Bom. L R. 787=57 I.C. 540=44 B. 602.**

———**Ss 36 and 37**—*Suit against representatives of guardian or manager for account—Maintainability.*

Where defendant was appointed manager of the plaintiff's property during his minority under Act XI of 1858 a suit by the latter after attaining majority against the manager for accounts might, if the manager died pending the suit, be proceeded with against his heir. Ss. 36 and 37 of Guardians and Wards Act appear to indicate that a suit against the representatives of a manager for an account would lie. (*Chitty and Teunon*, JJ.) MAHARAJ BAHADUR SINGH *v.* BASANTA KUMAR ROY.
18 I.C. 876=17 C W.N. 695.

———**Ss. 36, 37 and 41 (3)**—*Suit for accounts by minor against legal representatives of guardian.*

A minor can sue the legal representative of his deceased guardian for accounts where the guardian had died without rendering accounts, and S. 41 (3) is no bar to it. (*Shah Din and Leslie Jones*, JJ.) MUHAMMAD JAMIL *v.* MEHRAM BIBI. **65 P.R. 1918=124 P.W.R. 1918=46 I.C. 457=122 P.L R. 1918.**

———**S. 39**—*Removal from guardianship—Grounds—Neglect of education of minor.*

Where the father who was appointed guardian of the person and the property of his minor son and who had precarious means of livelihood, laid claims to his minor son's money, neglected his education, and took another wife. *Held*, that the father was not a fit person to act as guardian from the point of view of minor's welfare, and should be removed. (*Tudball and Rafique*, JJ.) GANGA NARAIN *v.* KAUNSILA.
19 I.C. 65=11 A L.J. 209.

———**S. 39**—*Removal of guardian—Notice to show cause—Essential.*

As person should not be appointed guardian of the person or the property of an infant without enquiry into his fitness for the office, no order for removal of the guardian should be passed till the guardian is informed of the charges brought against him and is allowed a reasonable opportunity to explain and, if possible, to defend his conduct. 17 C.W.N. 862, Ref. (*Mookerjee and Cuming*, JJ) JAGANNATH PANJA *v.* MAHESH CHANDRA PAL.
25 C.L.J. 149=36 I.C. 286=21 C.W.N. 688.

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———S. 39— *Removal of guardian—Appeal—Notice to show cause essential before removal.*

When the question is whether the guardian has been properly removed, the order of removal is appealable. The Court has to proceed under S. 39 after informing the present guardian under what clause or clauses of S. 39, he is being proceeded against. (*Coxe and Chatterjee*, JJ.) MAHADEO MONDAL *v.* BIDHI CHAND MONDAL. **27 I.C. 28=20 C.L.J. 298.**

———Ss. 39, 47 and 48—*Revocation of order of appointment—Appeal.*

An order revoking a previous order appointing a guardian upon a misrepresentation of facts could not be questioned by way of appeal under S. 47 as the order was not made under any of the clauses of S. 39 of the Act. S. 48 does not preclude the District Judge from reconsidering his order. (*Mookerjee and Beachcroft*, JJ.) RASHMONI DASI *v.* GANADA SUNDARI DASI. **20 C.L.J. 213=26 I.C. 275=19 C.W.N. 84.**

———S. 39—*Removal of guardian—Grounds—Re-marriage of mother.*

A Hindu widow who has been appointed a guardian of her minor sons, need not be removed from such guardianship, simply because she re-marries. The discretionary power conferred upon the Court to remove the re-married mother must be regulated from the point of view of the welfare of the infant concerned. (*Mookerjee and Caspersz*, JJ.) GANGA PRASAD *v.* RAMSHREY SHAHU. **38 Cal. 862=15 C.W.N. 579=10 I.C. 69=13 C.L.J. 553.**

——— Ss. 39 and 47 (g)—*Refusal to remove guardian—Appeal.*

There is no appeal from an order made by the District Judge refusing to remove a guardian. 19 Cal. 487; 23 Cal. 201; 20 Bom. 667; 20 All. 433. Foll. (*Shah Din*, J.) RAM KISHEN *v.* THAKURDAS. **14 I.C. 56=195 P.W.R. 1912.**

———S. 39—*Guardianship of person—Hindu Joint family.*

The Court cannot appoint a guardian of the person of a Hindu minor of a joint family. (*Spencer and Bakewell*, JJ.) JAMBAGATHACHI *v.* RAJAMANNARSWAMI NANDHWAR. **57 I.C. 678=11 L.W. 596.**

———S. 39—"*Instrument*"—*Meaning of.*

The word "instrument" in S. 39 must be confined to instruments *ejusdem generis* with a will and does not cover a compromise decree. 18 Bom. 375, Foll. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) KRISHNAMURTI AIYAR *v.* PARVATHI AMMAL. **42 I.C. 505=6 L.W. 760.**

———S. 39—*Testamentary guardian—Invalid appointment—Will, if can be set aside under S. 39.*

GUARDIANS AND WARDS ACT (VIII 1890), S. 39.

Under S. 39, a will need not and could not be set aside when the testator had no legal power to appoint a guardian for the property. (*Sadasiva Iyer and Moore*, JJ.) ALAGAPPA IYENGAR *v.* MANGATHAYI AMMANGAR. **40 Mad. 672=34 I.C. 765=30 M.L.J. 504.**

———S. 39—*Guardian not validly appointed—Trespasser, if could be removed.*

Where a guardian is appointed by a stranger for the minor son of another, he is a trespasser and cannot be removed by a petition under S. 39, Guardians and Wards Act, which applies to removal of guardian properly appointed. (*Sadasiva Aiyar and Spencer*, JJ.) KANAKA SABAI MUDALIAR *v.* PONNUSAMI MUDALIAR. **21 I.C. 848.**

———S. 39 (e)—*Disregard of terms of appointment—Removal.*

Failure by a guardian to comply with the terms of his appointment justifies his removal by the Court. (*Reid*, C. J.) GHEHA *v.* BHARI. **98 P.W.R. 1913=20 I.C. 10=164 P.L.R. 1913.**

———Ss. 39 (e), 45, 34 (e)—*Guardian disobeying order under 34 (e)—Imposition of fine ultra vires.*

If the guardian refuses to carry orders of the court, he can be removed under S. 39 (*e*) of the Act, S. 45 of the Act makes a provision for imposing a penalty on the guardian for contumacy but the omission on his part to obey the direction of the Court under S. 34 (*e*) is not made punishable. (*Shah Din*, J.) NAJPAT ALI *v.* MEHTAB BIBI. **34 P.R. 1912=90 P.W.R. 1912=14 I.C. 789=137 P.L.R. 1912.**

———S. 39 (h)—*Guardian—Residence—Jurisdiction of Court.*

An applicant for guardianship must reside within the jurisdiction of the Court to which he makes the application. (*Rafique and Piggott*, JJ.) ASGHAR ALI *v.* AMINA BEGAM. **36 All. 280=24 I.C. 59=12 A.L.J. 392.**

———S. 39 (h)—*Guardian—Residing outside jurisdiction at time of appointment—Removal—Review—C. P. Code, S. 114.*

A person appointed guardian of a minor by a Court whose jurisdiction does not extend to his place of residence cannot be removed from such guardianship subsequently, under S. 39 (*h*) of the Guardians and Wards Act on the ground that he does not live within the jurisdiction of the Court. S. 114. C.P. Code, has no application to orders passed under the Guardians and Wards Act. 143 P.R. 1903 Rel. (*Reid*, C. J.) RALLA *v.* MANGALAN. **116 P.R. 1912=174 P.L.R. 1912=15 I.C. 559=211 P.W.R. 1912.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 40.

———S. 39 (j)—*Hindu Widow's Re-marriage Act* (XV *of* 1856), *Ss.* 3 *and* 5—*Hindu widow appointed testamentary guardian—Re-marriage—Effect of.*

A widow appointed as a testamentary guardian does not become legally disqualified by re-marriage, to continue to be guardian. (*Kensington*, J.) MAYA DEVI *v.* GOAPL.
47 P.L.R. 1913=18 I.C. 133=32 P.W.R. 1913.

———S. 40—*Application for removal of guardian dismissed—Subsequent application is barred.*

Where an application for the removal of a duly appointed guardian of the person of a minor has been dismissed and the order of dismissal has been duly confirmed on appeal, a fresh application on the same allegations as before, for removal of the guardian of the minor is not sustainable. The fact that the widowed mother of the minor is living with her newly married husband in the same house as the minor is no ground for her removal from guardianship of her minor son. (*Piggott and Walsh*, JJ.) BHAGWAN DAS *v.* MANGALIA.
20 A L J. 959=45 A. 196=1922 A. 540.

———S. 41—*Removal of guardian—Return of property of minor.*

The guardian must without prejudice to his title or to anything he could establish by suit be compelled to give up possession on ceasing to be guardian. (*Robertson*, J.) PARMAN NAND *v.* ARURA RAM. **33 P.L.R. 1912=14 I.C. 674 (1)=112 P.W.R. 1912**

———S. 41 (2) and (3)—*Powers of Court to order delivery of possession when can be ordered.*

Until Court has passed an order for the removal of the guardian it has no power to call upon him to deliver the property in his possession. The power of compelling the guardian to deliver possession of the property can only be exercised in the interest of the minor. These summary powers are meant for his protection. They cannot be invoked by a person claiming adversely to the minor. The remedy for such adverse claimants lies in a regular suit. (*Mittra*, A.J.C.) MT. SITABAI *v.* SHANKAR. **1922 Nag. 266.**

———S. 41 (3)—*Death of minor—Liability of guardian to deliver up property.*

The death of a minor does not put an end to the responsibility of the guardian to account to the Court for the period of the stewardship. The Court, however, has no jurisdiction to order the guardian on the death of the minor to deliver up all moveable property, cash and documents to his widow. (*Walsh and Ryves*, JJ.) CHANDRA BHUKHAN SINGH *v.* SUJAN KUAR. **42 All. 1=52 I.C. 167=17 A.L.J. 861.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 41.

———Ss. 41 (3) and 45 (1) (c)—*Direction to render accounts after termination of guardianship—Money spent for necessities of minor without permission of Court—Detention in jail for non-delivery.*

S. 41 of the Act does not authorise a Court to order accounts to be rendered after the termination of the guardianship. But the Court has power under S. 41 (3) to direct a guardian on the termination of his guardianship to deliver any property including money belonging to the ward in his possession. 5 C.W.N. 207, Foll. Where a guardian has actually applied the balance in his hands for the necessaries or benefit of the minor he cannot be called upon to pay such money as if "property of the minor in his possession" and detained in jail for non-payment merely because there was no permission to spend money in that way (*N. R. Chatterjee and Richardson*, JJ.) ABDUL HASIM *v.* SRIMATI MALEKA KHATUN.
49 I.C. 132=29 C.L.J. 44.

———S. 41 (3)—*Suit for accounts against deceased guardian's representatives, if lies.*

A ward cannot maintain a suit against the widow and minor sons of his deceased guardian. 22 All. 332, Foll.; 11 Bom. L. R. 190; 7 I. C. 214, Dist (*Kensington*, J.) PRITAM SINGH *v.* MUBARAK SINGH. **78 P.L.R. 1911=9 I.C. 591=74 P.W.R. 1911.**

———S. 41 (3)—*Death of ward—Power to direct guardian to hand over properties to heir.*

Where the powers of a guardian for the proprety of a minor cease, owing to the minor's death, the Court has jurisdiction under S. 41 (3) of the Guardians and Wards Act to pass an order directing the guardian, to deliver the property of the minor to the later's heir. 33 Bom. 519, Foll. The expression "property belonging to the ward" in S. 41 (3) includes property which belonged to the person who was a ward though by the cessation of his minority or by his death, he has ceased to be a ward. "Any cause" includes death of the minor which terminates the guardianship. (*Oldfield and Sadasiva Iyer*, JJ.) NATARAJ PILLAI *v.* SUBBARAYA PILLAI. **51 I.C. 529=(1918) M.W.N. 440.**

———S 41 (3)—*Guardian* de facto—*Requisition for delivery of properties.*

The Court has power under S. 41 (3) of the Act to require a *de facto* guardian to deliver the infant's properties to the guardian appointed under the Act. (*Ayling and Krishnan*, JJ.) WALLACE SITA BAI *v.* WALLACE RADHA BAI. **51 I.C. 236=36 M.L.J. 189.**

———S. 41 (4)—*Absence of express order of discharge—Suit against sons, if lies.*

A suit will lie against the guardian's son and surety, to render accounts in the absence of an

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order of discharge of the guardian. (*Martineau*, J.) JAGAT SINGH *v.* SUNDAR SINGH.
67 I.C. 935 = 3 Lah. L.J. 361.

——S. 41 (4)—*Order of discharge not express—Civil suit by ward for accounts.*

To bar a suit by a ward on attaining majority against a guardian for rendition of accounts, the order of discharge under S. 41 (4) must be in express terms. 34 Cal. 211; 15 C.L.J. 57, Foll. (*Broadway*, J.) AMARNATH *v.* RAGHPAT RAI. **25 P.R. 1918 = 108 P.L.R. 1917 = 41 I.C. 341 = 73 P.W.R. 1917.**

——Ss. 41 (4) and 48—*Order of discharge must be express—Guardian cannot set up title of third person.*

An order by a Court discharging a guardian must be express and cannot be inferred from other facts. A certificated guardian cannot be heard to say that he did not do his duty but et the properties remain under the management of somebody else. A guardian, without taking his discharge and giving up possession cann t set up as against his *cesuique trust* his paramount title or the paramount title of a third person. (*Das and Ross*, JJ.) ABDUL RAHIM *v.* BARIRA.
2 Pat. L.T. 556 = 61 I.C. 807 = 6 Pat L.J 273.

——S. 42—*Applicability.*

S. 42 comes into operation only where a guardian is properly removed. (*Coxe and Chatterjee*, JJ.) MAHADEO MONDAL *v.* BIDHI CHAND MONDAL. **27 I.C. 28 = 20 C.L.J. 298.**

——S. 42—*Order appointing guardian—Whether appealable.*

An order appointing a guardian under S. 42 is appealable under S. 47 of the Act. (*Pratt*, J. C. *and Kemp*, A. J. C.) GHULAM HYDER *v.* ABDUL FATEH MAHOMED KHAN.
23 I.C. 776 = 7 S.L.R. 90.

——Ss. 43, 12 and 47—*Application for guardianship of the person of a minor girl—Orders regarding marriage of the girl—Validity.*

Pending the disposal of an application for an appointment of guardian of the person of a minor girl, the Court sanctioned the proposal of her marriage. *Held*, that the order passed by the Court regarding the marriage of the minor could not be made either under S. 12 or S. 43 and no appeal lay under S. 47. (*Shah and Crump*, JJ.) LAKSHMI NARAIN SESHAGIRI *v.* PARVATIBAI PARMESHWAR.
41 Bom. 690 = 57 I.C. 79 = 22 Bom L.R. 399.

——S. 43—*Order under—Disobedience—Power of Court to act* suo moto—*Security for guardian's appearance and production of another person—C P C., O. 39, R. 2.*

A guardian disobeying an order of the District Court under the Guardians and Wards Act can be ordered to give security for his own appearance but cannot be compelled to cause the production of another person. The Court

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is competent to act *suo moto* in regard to a disobedience of an order under Guardians and Wards Act unlike a disobedience to an injunction issued under the C. P. C. In the former case, the Court acts in the interest of the minor and in the latter the order is solely for the party's benefit. (*Sankaran Nair*, J.) RAMASAMI CHETTY *v.* LAKSHMI ACHI.
(1913) **M.W.N. 172 = 13 M.L.T. 211 = 18 I.C. 922 = 24 M.L.J 231.**

——S. 43 (4)—*Order under—Nature of—Disobedience—Sanction.*

An order made under S. 43 (1) and (2) of the Guardians and Wards Act is in the nature of an injunction and the same sanction should be applied in case of disobedience as is prescribed in Ss. 492 and 493 of the C.P.C. (1882) whether or not disobedience is capable of removal or reparation. But where the order is one without jurisdiction, the injunction is void and a person disobeying such order cannot be punished. (*Mookerjee and Carnduff*, JJ.) SUBHADRA KOER *v.* DHAJADHARI GORWAMI.
15 C.L.J. 147 = 14 I.C. 380 = 16 C.W.N. 447.

——Ss. 43 and 34 (d)—*Recusancy—Meaning of—Failure to comply with requisition.*

The word "recusancy" in S. 45 of the Guardians and Wards Act means something more than mere disobedience of an order under Cl. (*d*) in S. 34 of the Act and the person disobeying would not be sent to jail in the absence of proof that he has some means. (*Newbould. and Panton*, JJ.) BULAI CHAND *v.* NARAIN CHANDRA. **49 I.C. 624.**

——S. 45(1) (b)—*Failure to deposit moneys alleged to be misappropriated—Fine—Legality.*

The Court can impose a fine on a guardian, only if the guardian fails to pay into the Court on a requisition under S. 34 (*d*) the balance due on the accounts given by him in compliance with a requisition under S. 34 (c) and not for failure to deposit moneys alleged generally to have been misappropriated. (*Mookerjee and Cuming*, JJ.) JAGANNATH PANJA *v.* MAHESH CHANDRA PAL.
25 C.L.J. 149 = 36 I.C. 286 = 21 C.W.N. 688.

——S. 45 (1) (b) and S. 34—*Guardian's failure to realise purchase-money from his vendee—Order to pay unrealised money in Court or pay a daily fine—Whether* ultra vires.

An order by Court directing a guardian pay unrealised purchase-money when the purchaser did not at all pay the price to the guardian into Court or pay in default a daily fine, is *ultra vires*. (*Chatterjee and Chapman*, JJ.) *In re* NIKHRANNESSA BIBI. **33 I.C. 918 = 20 C.W.N. 663.**

——S. 46—*Report of Collector—When evidence.*

It is only when the District Court calls upon the Collector to report under S. 46 then it is

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open to the Court to treat it as evidence. (*Shah*, A.C.J. *and Crump* J.,) NAGAVA GURLINGAYA NANDI *v.* COLLECTOR OF BELGAUM. **25 Bom. L.R. 1232 = 1924 Bom. 157.**

———Ss. 47 and 48—*Refusal to remove guardian—Appeal.*

An order refusing to remove a guardian is final and no appeal lies against it under Ss. 47 and 48. (*Tudball and Sulaiman*, JJ.) MUHAMMAD ANWAR ALI *v.* DARA SHAH KHAN. **18 A.L.J. 624 = 56 I.C. 208 = 2 U.P.L.R. (A) 217.**

——— Ss. 47 and 48 — *Order sanctioning marriage—Appeal.*

An order of the District Judge sanctioning a marriage of minor girl while an application for appointing a guardian for her is pending, is not appealable under S. 47 as the order does not under S. 48. (*Shah and Crump*, JJ.) LAXMINARAYAN SESHAGIRI HALDIPUR *v.* PARVATIBAI PARMESHWAR MUDLIARI. **44 Bom 690 = 57 I.C. 79 = 22 Bom. L.R. 399.**

———Ss. 47, 48 and 50—*Application dismissed for non-appearance—Second application if lies—Order dismissing the latter application—Appeal.*

Where one application by the petition to be appointed guardian of his minor son and daughter is dismissed for default of appearance a second substantive application for the same purpose is maintainable. The order of the District Court dismissing the application is appealable. In view of the fact however that the daughter was close upon her majority the application for her guardianship should be dismissed though it can proceed in respect of the minor son. (*Chitty and Teunon*, JJ.) AHMAD ALI *v.* RAISUNNESSA. **18 I C. 985 = 17 C.W.N. 429.**

———Ss. 47 and 48—*Order appointing guardian—Not open to Review.*

An order for appointing a guardian of a minor under S. 7 of the Guardians and Wards Act is not open to review, as S. 48 makes such an order final. 143 P. R. 1906 foll. (*Scott-Smith*, J.) MUSSAMMAT SHARFAN *v.* MST. BHOLI. **4 Lah. L J. 274; 1922 Lah. 395.**

———Ss. 47, 48 and 34—*Order directing guardian to pay money into Court—Appeal—Revision.*

No appeal is allowed against an order calling upon a guardian to pay into Court the balance due from him on settlement of his accounts. But orders under S. 34 of the Guardians and Wards Act are open to examination by the High Court on the revision side. (*Broadway*, J.) RAM DAS *v.* CHANI. **55 I.C. 587.**

———Ss. 47 and 48—*Order returning—Application for guardianship for presentation to proper Court—Appeal—Revision.*

GUARDIANS AND WARDS ACT (VIII of 1890), S. 48.

An order returning an application for guardianship for presentation for the Court having territorial jurisdiction, is not appealable. The Chief Court would not exercise its revisionar powers as she had another remedy open to hel namely of presenting her application to the proper Court. (*Abdul Raoof*, J.) MUSSAMMAT MURAD BIBI *v.* UMAR DIN. **68 I C. 863 = 107 P.R. 1919.**

——— Ss. 47 and 48—*Third party in possession of minor's property—If can be compelled to hand it over to the guardian—Order refusing to compel—Appeal.*

There is no provision in the Act by which a person who is in possession of the minor's property can be compelled to hand over the property to the person appointed by the Court as guardian of the property. An order of the District Judge declining to compel such person to hand over the property to the guardian, is not appealable. (*Chevis*, J.) NATHU RAM *v.* KARMON. **40 P L R 1912 = 13 I.C. 326 = 115 P.W.R. 1912.**

———S. 47—*Approval of security by guardian—Appeal.*

An appeal lies only against an order appointing a person, guardian of the property of a minor; but an order approving the security furnished by him and ratifying the original appointment is not appealable under S. 47 of the Guardians and Wards Act. 27 I.C. 921, Foll. (*Sadasiva Aiyar and Moore*, JJ.) GOPPAMAL *v.* SRINIVASA AIYANGAR. **34 I C 432 = 30 M.L.J. 508.**

———S. 47, Cl. (g)—*Joint guardians—Removal of one for ind-finite period—Appeal—Order without enquiry—Legality of.*

An order by which one of two joint guardians appointed under the Guardians and Wards Act was permitted to manage the minor's estate singly, until the disposal of the application for Letters of Administration made by the other guardian, is appealable under S. 47, Cl. (*g*) of the Act. Such an order if made without any inquiry into the truth or otherwise of the respective allegations of the guardians, is unsustainable. The mere fact that a guardian has applied for Letters of Administration is no ground for his removal from the management of the property. (*Mookerjee and Newbould*, JJ.) KAMAKSHA BASINI CHOWDHURANI *v.* JAGAT SUNDARI CHOWDHURANI. **30 I.C. 875 = 22 C L J. 70.**

———S. 48 — *Dismissal of application to guardianship—Suit to contest, if maintainable.*

An order dismissing an application for guardianship cannot be contested by a regular suit. (*Shadi Lal*, J.) NAGINA SINGH *v.* SUNDER. **33 I.C. 987 = 24 P.W.R. 1916.**

———S. 48—*Order refusing to remove guardian—Not appealable.*

Where the District Court refuses to remove a guardian its order is final and there is no

GUARDIANS AND WARDS ACT (VIII of 1890), S. 48.

appeal against it. (*Oldfield and Devadoss, JJ.*) KONTHALATHAMMAL *v.* SOUNDARATHACHI.
46 Mad. 873=45 M.L.J. 481=18 L.W. 256=33 M.L.T. (H.C.) 80=74 I.C. 896=(1923) M.W.N. 902.

——— **Ss. 48 and 41 (3)**—*Requisition—Suit in Court—Maintainability.*

S. 48 of the Act does not cover the case of a requisition under S. 41 (3) and a separate suit will lie to contest the propriety of the requisition under S. 41 (3). (*Ayling and Krishnan, JJ.*) WALLACE SITH BOI *v.* WALLACE RADHA BOI. **51 I.C. 236=36 M.L.J. 189.**

——— **S. 50**—*Rules under—Postponement of appointment until security is furnished*—Ultra vires.

Per *Sadasiva Aiyar*, J.—(Contra)—Rules and forms made by the High Court under S. 50 requiring the appointment of guardian to be postponed to the furnishing and approval of security are *ultra vires*. Per *Moore*, J.—The same are *intra vires* The procedure based on rules framed by the High Court under S. 50 of the Act, prevailing in the Mofussil Courts of first making an appointment of a guardian conditional on security being furnished and of confirming the same later on being satisfied with the security or treating the petition as pending till proper security is furnished is correct. (*Sadasiva Aiyar and Moore, JJ.*) GOPPAMMAL *v.* SRINIVASA AIYANGAR.
34 I.C. 432=30 M.L.J. 508.

GUDABA OR GADABA.

See GRANT INAM.

GUZARAT TALUKDAR'S ACT (VI OF 1888).

——— **S. 2 (1) (a)**—*Mulgameti—Meaning of—Kathis of Salangpur—Status of—Talukdars.*

The Talukdari estates in Guzarat are the remnants of old Rajput kingdoms, those disintegrated being either disrupted by internecine feuds or crushed by foreign invaders. The Subordinate States thus formed were known by names generally indicative of their origin, The smallest of those subordinate rulers was the Gameti or ruler of a single village. Under the British rule the old rulership slowly degraded into a mere landlord estate. A Talukdari is therefore an estate which connoted rulership in pre-British times but which is now a landlord estate to which some seignorial or subordinate rights may or may not still be attached. When the estate connoted rulership of a single village the holder is a Mulgameti (*i.e.*) a gameti who has lost all or most of his lordships. As these estates were very small the holder was not included in the definition of Taluqdar until the Amending Act (II of 1905) recognised as a Taluqdar a Mulgameti who holds lands directly from Government. Per *Marten*, J:—A mulgameti is one who is discended from a former ruler and owner of the village and still retains by regrant or otherwise some portion of the lands or interests therein of such former

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ruler and owner, but not necessarily any of his governing rights. The kathis of the village of Salangpur in the Dhanduka Taluka of the District of Ahmedabad are Mulgametis but they do not hold land directly from the Government and are not therefore Talkudars within the meaning of S. 2 (1) (*a*) of the Guzarat Talukdar's Act, 1888 as amended by S. 2 (1) of Act II of 1905. (*Marten and Pratt, JJ.*) SIR DOLAT SINGJI *v.* OGHAD VIRA.
25 Bom. L.R. 726=1924 Bom. 72.

——— **S. 10**—*Decree-holder for share of Talukdari—Right to get divided.*

Under S. 10, a person who has obtained a decree of Court that he is entitled to a share of the Talukdari estate, can have his share divided from the rest of the estate and hold the same as a separate estate. The section does not say that the decree must operate as *res judicata* between all parties appearing before the Talukdari settlement officer. (*Batchelor and Rao, JJ.*) GAMBHIR SINGH *v.* AGAR SINGH. **9 I.C. 943=13 Bom. L.R. 118.**

——— **S. 16**—*Decision contemplated by section—Nature of—Order rejecting an application for partition.*

The only kind of decision contemplated by S. 16 of the Gujarat Talukdar's Act is the decision referred to in S. 15 (2) which must be given after the making of all necessary inquiries and the taking of such evidence as may be adduced. An order rejecting an application for partition is not a "decision" within S. 16 (1). (*Batchelor and Rao, JJ.*) GAMBHIR SINGH *v.* AGAR SINGH. **9 I.C. 943=13 Bom. L.R. 118.**

——— **S. 29**—*Exclusion of time—Execution of decree against—Talukdar—Obtaining of—Certificate—Time spent—Deduction of.*

Held, that an application for execution of decree in 1916 was in time as by virtue of Sub-S. 3 of S. 29-E of the Guzarat Talukdar's Act, the applicant was entitled to exclude the time from 16th Septr., 1910 (the date of the decree) to August, 1914, the date of the due submission of the decretal claim to the Managing Officer which was the date for the application of the certificate. (*Shah and Marten, JJ.*) HARGOVIND *v.* NAJA SURA. **43 Bom. 43=47 I.C. 726=20 Bom. L.R. 872.**

——— **S. 29 B**—*Mortgage by* Talukdar—*Mortgagee mortgaging the mortgage rights to another—Latter ejected by Taluk Officer—Effect.*

A *Talukdar* mortgaged his lands to A who in his turn mortgaged his rights to B. The *Talukdari* Settlement Officer who took charge of the lands of the *Talukdar* issued a call to the creditors to notify their claims. Neither B nor the minor heir of A notified the claim and B was ejected. In a suit by B for recovery of possession, *held*, he was entitled to possession so long as he claimed under A and as long as

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the mortgagee's rights were in existence. (*Maclcod*, C. J. *and Shah*, J.) HARANBHAI *v.* COLLECTOR OF KAIRA.

23 Bom. L.R. 1046=46 B. 289=1922 B. 200.

———**S. 29-B**—*Claim under—If limited to Talukdar estate.*

Claims under S. 29-B are not limited to claims against Talukdar's estate. (*Scott*, C. J. *and Beaman*, J.) SHANKAR BHAI KASHI BHAI *v.* RAISINGI JASWATSINGI.

42 I.C. 903=19 Bom. L.R. 855.

———**S. 29-B**—*'Unable,' meaning of—Not restricted to physical inability.*

Where a person asserting the rights of a mortgagee appealed against the decree of a Subordinate Judge negativing those rights but in the meantime the property passed under the management of Talukdari Settlement Officer, under the Act and a notification under S. 29 (B) of that Act was issued by him calling on all claimants to appear and establish their rights within six months of the date of the notification but the person asserting the rights of mortgagee could not establish his claim within time as the appellate decree in his favour was passed after the period of six months in the notification and the Talukdari Settlement Officer appealed, against the decree, as a person repreeenting the estate but failed and the decree holder applied for certificate for execution under S. 29-B of the Act. *Held* that (1) As the appeal was not heard and decided within 6 months from the notification, the appellant was unable to establish his claim. The word 'unable' in S 29—B (3) is not restricted to a physical inability on the part of the claimant. (*Scott*, C. J. *and Batchelor*, J.) MANILAL POPAT LAL *v.* KHODABAI SARTANSING. **16 Bom. L R. 511=25 I C 365=38 B 604**

———**S. 29-B, cls. (1 and (2)**—*Notice under—Necessity for—Decree against Talukdar—Execution.*

Although a decree had been passed against a Talukdar, which was being executed before S. 29-B was enacted, still notice of the claim is necessary after the notification under S. 29-B, has been issued. 11 Bom. L.R. 1358 ; 19 Bom. L R. 855, Ref. (*Macleod*, C. J. *and Coyajee*, J.) THE TALUKDARI SETTLEMENT OFFICER *v.* AKUJI ABHOAM.

24 Bom. L R. 762=46 B. 993=1922 Bom. 350.

———**S 29 (e)**—*Exclusion of time—Application for execution.*

On 22—2—1903 B obtained a money decree against G, a Talukdar, and applied for execution on 8—12—1903. On 21—9—1905 G's estate came by notice in the management of the Talukdari Settlement Officer under S. 29 (*e*) of the Act (1888). B submitted his claim to the officer on 6—3—1906 but it was rejected on

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12th August of the same year. B then applied to the Civil Court on 12—3—1909 and sought to bring it within time, by claiming to exclude the period taken up before the Talukdari Settlement Officer ; *held*, that the period cannot be excluded in computing the time for the application, for, S. 29 (*e*) was no absolute bar on B's right to apply to the Court for execution owing to the submission of his claim to the Talukdari Settlement Officer. (*Chandavarkar and Heaton*, JJ.) GANPAT SINGH *v.* BAEJIBHAI.

35 Bom. 324=10 I.C. 912=13 Bom. L.R. 292.

———**S. 31**—*Talukdari estate—Meaning of—Vanta lands.*

The words "Talukdari estate" in S. 31 of the Guzerat Talukdar's Act are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a talukdar. Where lands situated in a Taludkari village and shown in the Government register as Sirkar Udar Jamabandhi, were recently entered as Vanta in the register of Inami Vanta lands kept by the Talukdar they do not cease to be "Taludar's estate" within the meaning of S. 31 of the Guzerat Talukdar's Act. Vanta tenure is prescription of remote antiquity without any deeds or grants. 4 B 887, Ref. (*Macleod*, C.J. *and Coyajee*, J) SHANKARLAL TAPIDAS *v.* BAJIKHAN AKHTYARKHAN. **24 Bom. L R. 709=1922 Bom. 342.**

———**S 31**—*Jivaidar, if Talukdar—Succession to Talukdari.*

Land held as Talukdari is distinct from land held under ordinary law of joint family. The rules of succession applicable to it are therefore distinct. A Jivaidar is a Talukdar and therefore he is the only person entitled to deal with the property. (*Macleod*, C.J. *and Heaton*, J.) BHAIJI ISHVARDAS SHAH *v.* THE TALUKDARI SETTLEMENT OFFICER.

41 Bom. 832=58 I.C. 88=22 Bom. L.R. 906.

———**Ss. 31 and 33**—*Adverse possession as mortgagee—Sections inapplicable — Power of Talukdari Settlement Officer.*

A Talukdar granted a plot of land in his talukdari estate to the father of the defendant for maintenance in 1862 who mortgaged it with possesion in 1889. In 1894 the mortgagor died and in 1895 the mortgagee died. After the death of the mortgagor the mortgagee and his son remained in possession of the property as mortgagee. In 1907 the Talukdari Settlement Officer summarily evicted the plaintiff under S. 79 (*a*) of the Land Revenue Code as amended by S. 33 of the Gujarat Tulukadaris Act, who brought suit for possession; *held*, that the plaintiff was entitled to succeed on the ground that he had been in adverse possession claiming title as mortgagee for more than 12 years since the death of the mortgagor. Ss. 31 and 33 of the Talukdars Act do not apply.

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(*Scott*, C.J. *and Chandavarkar*, J.) TALUQDARI SETTLEMENT OFFICER *v.* RIKHAVELAS. **37 Bom. 380=19 I C. 891=15 Bom. L.R. 378.**

———S. 33—*Summary eviction.*

Summary eviction is restricted to *talukdar's estate*, and other estates cannot summarily be taken possession of. (*Scott*, C.J. *and Beaman*, J.) SHANKARBHAI KASHIBHAI *v.* RAISINGI JASWATSINGI. **42 I.C. 908=19 Bom. L.R. 855.**

———S. 33—*Arrears of assessment—Attachment by mamlatdar of ornaments of Khatedar—Talukdari village-Minor Talukdar—Guardianship of Collector.*

A mamlatdar in charge of the management of a talukdari village, as a subordinate of the Collector who is the guardian of the minor talukdar, has power to attach under Ss. 150 and 154 of the Bombay Land Revenue Code to attach the ornaments of a khatedar for arrears of assessment due for previous years. (*Scott*, C.J. *and Heaton*, J.) DALUCHAND *v.* GULABBHAI. **34 I.C. 198=18 Bom. L.R. 323.**

GUMASTHA.

See (1) CONTRACT ACT.
(2) PRINCIPAL AND AGENT.

HABEAS CORPUS.

See HIGH COURT.

HACKNEY CARRIAGES ACT (XIV OF 1879).

———Ss. 6 and 7—*Insein Rules, R.* 15—*Refusal by driver to ply hackney carriage for hire—Liability of driver and owner.*

The driver of a hackney carriage is not punishable for infringement of R. 15 of the Insein Rules under the Hackney Carriages Act for refusal to ply it for hire, because he does not "keep" the carriage; nor is the "owner" liable for refusal of his servant. It must be shown that the hirer applied to the "owner" and was refused by him. (*Twomey*, J.) EMPEROR *v.* KAMALI KHAN. **16 Cr. L.J. 582=7 Bur. L.T. 301=24 I.C. 960=8 L B.R, 91.**

HANDWRITING.

See (1) EVIDENCE.
(2) EVIDENCE ACT, SS. 47, 67 AND 68.

HAT.

———*Right to hold market—Grant—Intimidation of customers.*

There is no such thing as a market franchise or a right to hold a market conferred by grant from the Crown, nor can such right be acquired by prescription. The right to hold a market is treated as an incident to the ownership of the land. The proprietor of the old market has no monopoly or privilege which is entitled to protection and immunity from competition. Where illegal means in the nature of intimidation and physical compulsion were employed by agents of the defts. acting within the scope of their employment to induce traders who would have gone to plff.'s old hat to attend deft's. new hat, and as a natural consequence thereof, there was diminution of plff's. profits from his hat. *Held*, that the plff. was entitled to a civil remedy by way of a suit for damages. (*Richardson and Greaves*, JJ.) HEM CHANDRA ROY *v.* KRISTO CHANDRA SAHA SARDAR. **24 C.W.N. 800=58 I.C. 879=47 C. 1079.**

———*Right to hold—Injunction.*

A party is entitled to hold a hat in his own village on any day subject to their committing no offence against public tranquillity. If by holding a hat on particular days he violates the legal rights of the other party to hold his hat on those days, he will be restrained from holding his hat on such days. (*Holmwood and Chapman*, JJ.) BROJENDRA KISHORE ROY CHOWDHURY *v.* ABDUS SOBHAN CHOWDHURY. **27 I C. 647.**

———*Right to hold—Lawful Act.*

The holding of a hat on a man's own property is not in itself a wrongful act and, therefore any ulterior consequences which may arise from it cannot give rise to any proceeding against the owner of the land for committing any act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of proceedings under S. 144, Cr. P. C. (*Holmwood and Imam*, JJ.) RAKHAL DAS SINGH *v.* EMPEROR. **13 Cr. L J. 511=15 I.C. 685=19 C.W.N. 248.**

HEARSAY EVIDENCE.

See (1) EVIDENCE.
(2) EVIDENCE ACT.

HEIRS.

See HINDU LAW—SUCCESSION.

HEIR, BEQUEST TO.

See WILL.

HEREDITARY ALLOWANCE.

See HEREDITARY OFFICE.

HEREDITARY OFFICE.

See (1) BOMBAY HEREDITARY OFFICES ACT.
(2) HINDU LAW, RELIGIOUS OFFICE.
(3) MAHOMEDAN LAW, RELIGIOUS OFFICE.
(4) MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).
(5) T. P. ACT, S. 6.

HERMIT.

See HINDU LAW—SUCCESSION.

HIBA BIL EWAZ.

See MAHOMEDAN LAW,—GIFT.

HIDDEN TREASURE.

See TREASURE TROVE ACT.

HIGH COURT.

See (1) GOVERNMENT OF INDIA ACT.
(2) JURISDICTION.
(3) PRIVY COUNCIL.

HIGH COURT.

———*Subordinate Courts—Duty to follow precedents.*

It is duty of Courts subordinate to a High Court to follow the decision of the High Court to which they are subject. (*Sir John Edge*) PUTTU LAL *v.* PARBATI KUNWAR.
37 All 359=42 I.A. 155=19 C.W.N. 841=13 A.L.J 721=17 Bom. L.R. 549=18 M.L.T. 61=29 M.L J. 63=22 C.L J. 190=2 L.W. 881=29 I.C. 617=(1915) M.W.N. 514 (P.C).

———*Contempt—Subordinate Court.*

Hight Court has power of take cognizance of contempt of Subordinate Court. (*Mr. Macleod and Shah*, JJ.) EMPEROR *v.* BALAKRISHNA GOVIND. **46 B. 592=23 Cr. L J. 177=24 Bom. L.R. 16=1923 Bom. 52.**

———*Subordinate Courts--Jurisdiction over.*

The jurisdiction of the Sudder Diwanee Adaulat (under B.R. II of 1827) to exercise general supervision over Subordinate Courts is still preserved to the High Court under S. 9 of the Indian High Courts Act. 24 and 25 Vic., C. 104. (*Batchelor and Hayward*, JJ.) BAI ATRANI *v.* LEEPSINGH BARIA.
40 Bom. 86=33 I.C. 358=17 Bom. L.R. 1097.

———*Chief Justice—Powers of—If can constitute Bench for trying only an issue in a case.*

It is open to the Chief Justice of a High Court to appoint a special Bench to try a case, but he cannot fetter the discretion of the Court as to how it should be tried. He cannot appoint Bench to merely try one issue in a case. (*Greaves and Buckland*, JJ.) GIRIDHARILAL HANUMANBUX *v.* EAGLE STAR AND BRITISH DOMINIONS INSURANCE COY. LTD. **27 C.W.N. 955=1924 Cal 186.**

———*Rules by Government under express provisions of law—Interference.*

The High Court will not interfere with rules and conditions framed by Government under express provisions of law unless they are in conflict with some legal principles. (*Chaudhuri and Cuming*, JJ.) NAGENDRALAL DAS *v.* MUNICIPAL COMMISSIONER OF CHITTAGONG. **59 I.C. 340==47 Cal. 426.**

———*Contempt—Commitment for.*

The High Court has no jurisdiction to punish, as an offence in a summary proceeding, conduct in relation to a proceeding in the mofussil Criminal Court, as such jurisdiction is neither derived from the Supreme Court or the Sudder Deewany, and the Sudder Nizamut Adaulats, nor is vested in the High Court by the Charter Act, (1861), or the Letters Patent under that Act, and as such conduct is not contempt of the High Court. (*Jenkins*, C.J., *Stephen, and Mookerjee*, JJ.) GOVERNOR OF BENGAL *v.* MOTILAL GHOSH. **41 Cal. 173=14 Cr. L.J. 321=17 C.W.N. 1253=20 I.C. 81=18 C.L J. 452.**

HIGH COURTS ACT, 1861 (24 & 25 Vic., c. 104), S. 15.

———*Power of Judges—Rules guiding.*

The rules governing the powers of the Judges of the Indian High Court are contained in the Letters Patent, the Rules of the Court and the orders passed by the Chief Justice under the provisions of the High Courts Act. (*Fletcher*, J.) PEARY MOHUN DAS *v.* DONALD WESTON. **9 I.C. 309.**

———*Powers of superintendence—Proceedings of Board of Revenue under S. 169, Madras Estates Land Act—If can be revised.*

Proceedings of Board of Revenue under S. 169 Madras Estates Land Act can be revised by the High Court. (*Spencer and Devadoss*, JJ.) BURLA APPANNA *v.* ANALA LATCHAYYA. **46 M.L.J. 725=33 M.L.T. 92 (H.C.)**

———*Certiorari — Power to issue writ—Limits of.*

Per *Sundara Aiyar*, J. (*Sadasiva Iyer*, J., *dissenting*). The High Court has no jurisdiction to issue a writ of *certiorari* on an officer beyond the limits of its Original Jurisdiction. Per *Sadasiva Aiyar*, J.—The Power to issue the writ of *certiorari* to quash judicial proceedings passed by persons in the moffussil rests in the High Court. 6 B.L.R. 392, Foll. The powers of the High Court with regard to the writs of *Habeas Corpus and certiorari* are the same. Nothing shall be intended to be beyond the power of the superior Courts unless expressly taken out of it. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) *In re* NATARAJA AIYAR. **36 Mad. 72=23 M.L J. 393=13 M L.T. 367=16 I.C. 786=13 Cr. L J. 723=(1912) M.W.N. 1012.**

HIGH COURTS ACT, 1861 (24 & 25 Vic., c. 104.)

———**S. 9**—*Limitation of powers under S. 9—Power of Indian Legislature to constitute Courts not subject to the High Court.*

The jurisdiction conferred upon the High Court by S. 9 of the High Courts Act is subject to the legislative powers of the Indian Legislative Council which can create new Courts independent of the control of the High Court. (*Miller*, C.J., *Mullick and Ali Iman*, JJ.) SHEO NANDA PRASAD *v.* EMPEROR. **3 P.L.J. 581=19 Cr. L.J. 833=5 P.L.W. 324=46 I.C. 977=1919 Pat. 1 (F.B.).**

———**S. 15**—*Proceedings under Ch. XII of Cr. P. Code.*

The High Court cannot interfere under the section in proceedings under Ch. XII of the Cr. P.C. (*Knox*, J.) MUTSADDILAL *v.* TARIF. **38 I.C. 978=18 Cr. L J. 418.**

HIGH COURTS ACT, 1861 (24 & 25 Vic., c. 104), S. 15.

———S. 15—*Power of superintendence—High Court—Chota Nagpur Tenancy Act, S. 85—Proceedings under.*

High Court cannot exercise superintendence under S 15 of the High Courts Act over proceedings for settlement of fair rents before a Revenue Officer under S. 85 of the Chota-Nagpur Tenancy Act of 1908. (*Mookerjee and Beachroft*, JJ.) UMA CHARAN MANDAL *v.* MIDNAPORE ZEMINDARY COY.

19 C.L.J. 300 = 23 I.C. 896 = 18 C.W.N. 782.

HIGH COURT RULES.

See UNDER VARIOUS HIGH COURTS.
(1) ALLAHABAD,
(2) BOMBAY,
(3) CALCUTTA,
(4) LAHORE,
(5) MADRAS,
(6) PATNA AND
(7) RANGOON.

HIGHWAY.

DEDICATION.
OBSTRUCTION.
OWNERSHIP.
PROCESSION.
WHAT IS.

Dedication.

———*Dedication — Proof of — Intention—User by public—Effect of—Public street—Road through private market when public trade by license.*

To constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention to dedicate by the owner of the soil. User by the public is only evidence of such intention. There may be a dedication by the public for a limited purpose *e.g.*, footway, horseway, etc. but there cannot be a dedication to a limited part of the public. *Poole* v. *Haskinson*, 11 M. and W. 827, Rel. In determining whether a road through private property is a public high way though no express dedication is proved, it is of crucial importance to distinguish between evidence showing an intention to dedicate to public generally and evidence showing that visitors to or traders with tenants whose shops abut on the road have, by permission a right of passage. (*Lord Shaw.*) MUHAMMAD *v.* MUNICIPAL COMMITTEE OF KARNAL CITY. **1 Lah. 117 = 47 I.A. 25 = 1 P.W.R. 1920 = 13 P.L.R. 1920 = 38 M.L.J. 455 = 11 L.W. 579 = 18 A.L.J. 466 = 22 Bom. L.R. 563 = 2 U.P.L.R. (P.C.) 87 = 55 I.C. 1 = 28 M.L.T. 1 (P.C.)**

[On appeal from 35 I.C. 458.]

———*Dedication of—Acceptance, if necessary.*

No formal act by any person or authority is required for the acceptance of a highway dedicated to the public use, such acceptance can be inferred from the public user of the way. (*Chatterjee and Walmsley*, JJ.) SURAJ MAL KHARAD *v.* AKSHOY KUMAR ROY.

40 I.C. 74 = 21 C.W.N. 595.

———*Dedication—Presumption—User.*

The principles of the English law regarding the presumed dedication of a road to the public arising from user of such road by the public being founded on reason and common-sense and conducive to public convenience, are applicable to India. 62 P.R. 1898, Foll. (*Johnstone*, C.J. *and Scott-Smith*, J.) MUNICIPAL COMMITTEE, KARNAL *v.* MUHAMMAD RUSTAM ALI KHAN. **108 P.R. 1916 = 35 I.C. 458 = 146 P.W.R. 1916.**

[On appeal see 56 I.C. 1 = 1 Lah. 117 (P.C.)

———*Dedication to class — Rights over other's property.*

Public highway cannot be dedicated to a class. All rights over other's property are private whether they belong to a class or an individual and whether they arise from any source. (*Ayling and Napier*, JJ.) SUBBAYA NADAN *v.* AIYAVOO REDDY. **5 L.W. 782 = 37 I.C. 977 = (1917) M.W.N. 70.**

———*Dedication—Presumption from user,*

If the public have been using the streets belonging to a temple for a very long time for passing and re-passing, this may be sufficient to raise a presumption of the dedication of the streets to the public for use as a highway. (*Benson and Sundara Iyer*, JJ.) ALAGASINGA BHATTAR *v*, TALUK BOARD RAJAMUNDRY.

16 I.C. 626 = 12 M.L.T. 159.

———*Dedication—Proof of—Grant User.*

Public rights of way as distinguished from easement arise from a dedication to the public by the owner of the soil over which they pass. Dedication arises from a gift expressed in a deed or implied from custom and user. Where a person encloses a public path over his land and allows any new one to be opened in its place, he must be presumed to have made a fresh grant to the public of the new path. (*Batten*, A.J.C.) LAXMAN *v.* TUKIA.

44 I.C. 868 = 14 N.L.R. 78.

———*Dedication — Inference from user—English law—Applicability of.*

It is competent to a Court to draw an inference of dedication of a highway to the public from long user. Though the general principles of English Common law as regards highways are applicable to India, the whole of the English Common law should not be bodily imported. (*Wazir Hasan*, A.J.C.) RAI BAIJRANG BAHADUR SINGH *v.* BABU BADRI NATH. **4 U.P.L.R. (P.C.) 105 = 9 O.L.J. 497 = 1923 Oudh 26.**

Obstruction.

———*Obstruction—Special damages.*

A narrowing of a public highway practically amounting to blocking it, is a special damage.

HIGHWAY—Obstruction.

(*Sunder Lal*, J.) RAM KRISHUN *v.* BANWARI RAI. **25 I.C. 266.**

———*Obstruction — Village pathway — Special damage not necessary to enforce right to pathway.*

The plaintiffs asked for declaration of a village pathway used by all the people of the village for certain specified purposes. The defendants contended that the alleged pathway was not a public highway but was a permissive foot track. *Held*, that the suit was for the enforcemen of a village pathway and no question of special damage arose in the case. 15 Cal. 460 Foll. It is only in the case of a public highway that the question of special damage arises; where the case is one of a village pathway, there is no question of special damage. 23 C.W.N. 91, Ref. (*Mookerjee and Rankin*, JJ.) HARISH CHANDRA SAHA *v.* HARISHCHANDRA CHACKERBUTTY. **1923 Cal. 622.**

———*Obstruction—Injunction to restrain—Special damage—Inability to commit nuisance.*

In the absence of proof of special damage to plaintiff beyond that suffered by the rest of the public who used the way there was no cause of action to the plaintiff to sue for injunction. If the passage was a public highway, the plaintiff was not entitled to erect a scaffolding on it and he could not sue in respect of a nuisance when the special damage he asserted was his own inability to commit a nuisance. *Beachcroft*, J.) SHYAM LAL DEY *v.* MANMATHA NATH SARKAR. **51 I.C. 324.**

———*Obstruction— Special damage—Proof of.*

Proof by the plaintiff that he and his servants had been compelled to go by a longer route and thereby incur additional expense is sufficient special damage entitling the plaintiff to sue for removal of an obstruction of a highway. Infringement of a pathway in which plaintiff had got a right with other villages by reason of a grant implied from long user does not require special damage to give the plaintiff a cause of action. The mere fact that the pathway is described in the plaint as a public pathway would not make any difference. (*Fletcher and Huda*, JJ.) HARIHAR DAS *v.* CHANDRA KUMAR GUHA. **49 I C. 79=23 C.W.N. 91.**

———*Obstruction — Suit for removal of—Proof of special damage necessary—Admission by one defendant, if binds others.*

A suit for the removal of an obstruction to a public road will lie only on proof of special damage to the plaintiff. An admission in such a suit by one defendant cannot bind the others. (*Coxe and Chatterjea*, JJ.) HEYAT BAKSH *v.* LACHMINIA. **22 I C. 916.**

———*Obstruction—Special damage—Village pathway.*

A public highway is different from a way over which a section of the public may have a right of way. Under S. 30 of the C.P.C., (1882) a suit to vindicate the plaintiff's right to village pathway obstructed by the defendant

HIGHWAY—Ownership.

is maintainable even without special damage. (*Jenkins and N. Chatterjee*, JJ.) KALI CHARAN *v.* RAM KUMAR. **18 I.C. 67= 17 C.W.N. 73.**

———*Obstruction—Cause of action—Order under S. 44, Cr. P. Code.*

An order under S. 144, Cr. P.C., does not affect the civil rights of the parties and if the right sought to be established in a public right special damage must be alleged and proved. 32 Mad. 527; 29 M.L.J. 91, Foll. (*Seshagiri Aiyar and Bakewell*, JJ.) KALMATTAPPA *v.* JOISH NARAYANA BHAT. **42 I.C. 337.**

———*Obstruction—Special damage.*

A suit by a private person in respect of an obstruction to a public way must allege, and the plaintiff must prove, special damage of a substantial character to himself. 23 M.L.J. 539; (1913) M.W.N. 1001, Foll. (*Sadasiva Aiyar and Napier*, JJ.) SIVA SANKARA REDDY *v.* MUTHUSWAMI KONAN. **25 I.C. 603.**

———*Obstruction—Special damage—Access to house.*

The right of a person to have access to his land abutting on a public pathway is not a private right but a right in common with the public and he cannot therefore maintain a suit for obstruction without alleging and proving special damage of a substantial character. 23 M.L.J. 539, Foll; 31 All. 444, Ref. (*Sadasiva Aiyar and Spencer*, JJ.) KANDASAWMY KAVUNDAN *v.* KURUPANNA KAVUNDAN. **(1913) M.W.N. 1001=21 I.C. 601= 14 M.L.T. 509.**

———*Obstruction — Special damage—Suit under S. 91, C.P.C.*

Obstruction of a way having not caused any special damage can afford no cause of action to a member of the public. Per *Sundara Aiyar*, J. Special damage need not always be pecuniary. 22 Cal. 551; 14 Mad. 137, Ref.; 8 A L.J. 19, Not appr. Per *Sadasiva Aiyar*, J—Special damages should be something substantial and not mere pecuniary damage to the extent of four annas or eight annas. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KHAJI SAYED HUSSAIN SHAB *v.* EDIGA NARASIMHAPPA. **23 M.L.J. 539=12 M.L.T. 491= 16 I.C. 952=(1913) M.W.N. 991.**

———*Obstruction—Damage special—Proof of.*

Special damage for obstruction of a high way has to be proved in a suit for its removal by a private owner. (*Prideaux*, A.J.C.) CHAINU *v.* MANBODH. **45 I.C. 894.**

Ownership.

———*Ownership—Dedication, presumption of, when ownership unknown.*

Where the ownership of a road is unknown, the dedication of it to the public is presumed

HIGHWAY—Ownership

from proof of its user by the public. (*Ayling and Napier*, JJ.) SUBBARAYA NADAN *v.* AIYAVOO REDDI. **5 L.W. 752= 37 I.C. 977=(1917) M.W.N. 70.**

——— *Ownership of soil—Ad medium filæ doctrine—Applicability.*

The doctrine that where a public path is admitted to be the boundary between the two estates, the presumption is that the soil up to half of the road belongs to each estate, must be confined to cases where it is clearly proved or both sides are agreed, that the limits of each village do not extend beyond the off side of the path. (*Sadasiva Iyer and Napier*, JJ.) ARUNACHELLAM CHETTY *v.* RAMANATHAN CHETTY. **31 I.C. 664.**

Procession.

———*Procession — Nuisance — Control by Police.*

Religious processions are lawful and come within a proper user of the highway. But they are always subject to the control of the Dist. Magistrate and Police Officers. They cannot be allowed to repeatedly stop on the public way so as to block the road and prevent the public from using it. (*Tudball and Sulaiman*, JJ.) MUHAMMAD ZAMAN *v.* MANZUR HASAN. **19 A.L.J. 740=63 I.C. 984= 3 U.P.L.R. (A) 129.**

———*Procession—Right of public to use it in lawful manner—Restriction of right—Burden of proof.*

The public are entitled to the lawful use of public streets, and those that would curtail this right, are bound to show some law or custom taking away this right. Thus the right of Lingayats in Belgaum District to the exhibition of the religious symbol in procession in public street can be exercised subject only to orders under S. 144, Cr. P.C. or under Ss. 42 and 44 of Bom. Dt. Police Act. 26 M. 76; 34 Bom. 571, Ref. to. (*Batchelor and Shah*, JJ.) DUNDAPPA MALLAPPA SIGANDHI *v.* SECRETARY OF STATE. **37 I.C. 363= 18 Bom. L.R. 460.**

———*Procession — Obstruction — Cause of action—Order under S. 144, Cr. P. Code—Suit for injunction without proof of damages—Right to go in procession.*

An order of a Magistrate under S. 144 of the Cr. P. Code forbidding a person or body of persons from using a highway for the purpose of procession invests the person or persons with a cause of action if they allege it to be an infringement of their legal rights though such order is itself *intra vires* and no special damage be alleged or proved. 2 Bom. 457, 32 Mad. 527; 32 Mad. 478 20 M.L.J. 118; 11 Bom. L.R. 372, ref. A person or body of persons by whom a right is claimed to go in procession along a public highway can bring a declaratory suit to establish that right against a person who threatens to obstruct it without allegation or

HIGHWAY—What is.

proof of special damage. (*Wallis*, C.J., *Ayling and Seshagiri Aiyar*, JJ.) VALAN PAKKIRI TARAGAN *v.* SUBBAYYA SAMBAN. **42 Mad. 271=36 M.L.J. 79=25 M.L.T. 39= (1919) M.W.N. 46=49 I.C. 533= 9 L.W. 208 (F.B.).**

———*Procession—Damages—Cause of action—Special damage.*

In the case of obstruction to a procession passing along public road, an action lies for an injunction on proof of special damage. Special damage does not mean actual pecuniary loss. It may consist in inconvenience or loss, consequent on waste of time involved in taking another route or in some damage peculiar to the community constituting the procession. (*Oldfield and Phillips*, JJ.) GANAPATHY MOOPPAN *v.* SUBBA NAYAKAN. **23 M.L.T. 258=44 I.C. 834= (1918) M.W.N. 547.**

———*Procession, obstruction to—Right of user of any member—Presumption.*

All members of public have a right of user of the public highway for conducting a religious or ceremonial procession without obstruction from anybody. This right is legally vested in every man even though the highway may not have been used for a particular purpose. (*Ayling and Napier*, JJ.) SUBBAYYA NADAN *v.* AIYAVOO REDDI. **(1917) M.W.N. 70=37 I.C. 977= 5 L.W. 752.**

———*Procession—Right of user—Grant of injunction—Religious procession.*

Every citizen has an inherent right to conduct religious processions through the public streets. This natural right may be restricted in the interests of public safety or its exercise may be limited. The right of every citizen to pass in procession through public streets is a Civil right. Where an injury is of such a character that pecuniary compensation will not afford sufficient relief and where it is necessary to avoid multiplicity of judicial proceedings, an injunction will be granted. Cases discussed. (*Seshagiri Aiyar and Kumaraswamy Sastri*, JJ.) ANDI MOOPAN *v.* MUTHUVIRAMMA REDDI. **29 M.L.J. 91= 29 I.C. 248=17 M.L.T. 453.**

———*Procession—Right to go in.*

The members of a religious community or denomination, are entiled to pass through a public way in procession for purposes of religious worship. 32 Mad. 478; 32 Mad. 527, Ref. (*Sundara Iyer*, J.) SENGODAN *v.* EMPEROR. **16 I.C. 806=13 Cr. L.J. 834.**

What is.

———*What is.*

All the ground whether metalled or unmetaled over which the public have a right of way is a public road. (*Richards*, C.J. *and Tudball*, J.) MUNICIPAL BOARD, AGRA *v.* SUDARSHAN DAS SHASTRI. **37 All. 9=26 I.C. 206= 12 A.L.J. 1137.**

HIGHWAY—What is.

———*What is—Elements necessary to prove.*

To establish a highway by user it is not necessary that it should lead from one public place to another public place. A public right of way cannot be established by proof of user alone without evidence to prove dedication to the public, such as evidence that the owner has allowed the public to spend money in improving the road. (*Ashworth* A.J.C.) DHANI RAM *v.* ABDUL KARIM. 53 I.C 441 (2)=22 O.C. 168.

HINDU BEQUESTS VALIDATION ACT (MADRAS ACT I OF 1914).

———S. 2 (2).

S. 2 (2) is very general and validate dispositions taking effect at a future date after the passing of the Act as the testator desires. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) KUDAPPA VENKAYAMMA *v* KAKARLA NARSAMMA 40 Mad 540=4 L.W 189=31 M.L J. 33=35 I.C. 150=20 M.L.T. 221.

HINDU LAW.

ADOPTION.
ALIENATION,
APPLIC BILITY.
ASCETICS.
CASTE.
CONVERSION,
CUSTOM.
DEBTS.
GIFT.
IMPARTIBLE ESTATE.
JOINT FAMILY.
LIMITED OWNER.
MAINTENANCE.
MARRIAGE.
MINORITY AND GUARDIANSHIP.
NIBANDHAS.
PARTITION.
RELIGIOUS ENDOWMENT.
RELIGIOUS OFFICE.
RE UNION.
REVERSIONER.
SCHOOLS OF LAW.
STRIDHANAM.
SUCCESSION.
TEXTS.
WIDOW.
WILL.

———**Adoption.**

AFFILIATION.
AGREEMENT.
AUTHORITY.
BURDEN OF PROOF.
CAPACITY TO TAKE.
CEREMONIES.
CUSTOM RY FORM.
DANCING GIRLS.
ELIGIBILITY.
ESTOPPEL.
EVIDENCE.
FACTUM VALET.
INVALID ADOPTION.
RIGHTS OF ADOPTED SON.
SETTING ASIDE.

SRINAGAR (Kashmir) DAR, B.A. LL.B. Advocate, High Court,

HINDU LAW—Adoption—Agreement.

SIMULTANEOUS ADOPTIONS.
WIDOW.

Adoption—Affiliation.

———*Adoption—Affiliation.*

Affiliation means the taking of a person into one's family without the ceremony of adoption. The person affiliated takes whatever property is given to him. (*Ayling and Hannay*, JJ.) CHALLA NARA *v.* VEDIMMULLA VIRA. 25 I.C. 893=(1914) M.W.N. 919.

Adoption—Agreement.

———*Adoption—Agreement — Agreement between adopter and father of adoptee—Validity of.*

A Dhayabaga Hindu took in adoption a boy with whose father he entered into an agreement whereby it was suggested that the adopted son would become entitled to all the adopter's properties, moveable and immoveable, and to perform the services of the idols and all rites and ceremonies in connection with paternal and maternal ancestors. The agreement further provided that in case a son should be subsequently born to the adopter both would be equally entitled to all the aforesaid moveable and immoveable properties which might be left by him. A son having been subsequently born: *Held*, that by the agreement, the adopter intended that the adopted son and the natural born son should inherit both the debutter and the secular properties of the adopter in equal shares. (*Sir John Edge.*) ASITA MOHAN GHOSE MOULIK *v.* NIRODE MOHAN ROY GHOSE MOULIK. 24 C.W N 794=47 I.A. 140=(1920) M.W.N. 541=12 L.W. 556 (P.C.).

———*Adoption—Agreement to pay annuity—Legality of.*

A grant of an annuity as consideration for the agreement to give a boy in adoption is invalid and unenforceable. *Quaere*: Whether the payment of the annuity, if there had been good consideration for it, could be enforced against the sons of the grantor. 6 Bom. L.R, 642; 7 Bom. L.R. 686, Ref. (*Macleod*, C.J. *and Coyajee*, J.) NARAYAN LAXMAN *v.* GOPAL RAO TRIMBAK. 24 Bom. L.R. 414=1922 Bom. 382.

———*Adoption—Agreement—Ante adoption—How far binding.*

An agreement between the natural father and adopting widow that she was to have absolute right of management and enjoyment of all income until death of the widow being unreasonable and unfair is not binding on the boy. (*Heaton and Shah*, JJ.) PURSHOTTAM *v.* RAKH MAHAI. 23 I.C. 599=16 Bom L.R. 57.

———*Adoption—Agreement not to adopt.*

Where a Hindu widow having authority to adopt from her husband enters into an agreement whereby she undertakes not to adopt in consideration of her getting some properties,

HINDU LAW—Adoption—Authority.

the agreement is void as contrary to the public policy. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) JAGANATHA *v.* KUNJA BIHARI.

25 M.L.T. 204=9 L.W. 385= 49 I.C. 929=(1919) M.W.N. 52.

Adoption—Authority.

———*Adoption—Authority—Construction.*

According to the Bombay School of law the duty of a Hindu widow to obey her husband's command compels her to act upon any mandatory direction that he may give by will as to the way in which her power of adoption should be exercised. The adoption by the widow of a boy different from the one specified in her husband's will was invalid. A condition in a will imposing duties on the adopted son is one subsequent to the appointment and not a condition precedent to the exercise of the power. (*Lord Buckmaster.*) SITA BAI *v.* BAPU ANNA PATIL. **47 Cal. 1012= 39 M.L.J. 106=(1920) M.W.N. 556= 12 L.W. 886=47 I.A. 202= 16 N.L.R. 162=22 Bom. L.R. 1359= 25 C.W.N. 97=57 I.C. 1= 2 U.P.L.R. (P.C.) 106 (P.C.).**

———*Adoption—Authority—Construction of—Authority to adopt if no issue, male or female.*

A Hindu testator by his will authorised his widow to adopt a son to him if no issue, male or female, should be born to him. The testator died without issue, but had a posthumous daughter, who herself died a short time after birth. The widow purported to adopt after the daughter's death. *Held*, that though there was a strong presumption that a Hindu would have liked the representation by an adopted son if he died issueless, still the clear language of the instrument excluded such presumptions and the authority to adopt did not exist in view of the events that happened. (*Viscount Cave*). BHAGWAT KOER *v.* DHANUKDHARI PRASHAD. **46 I.A. 259= 37 M.L.J. 513=17 A.L.J. 1036= (1919) M.W.N. 860=1 Pat. L.T. 1= 53 I.C. 347=2 U.P.L.R. (P.C.) 27 (P.C.).**

———*Adoption—Authority—Construction—Successive adoptions.*

The law recognises the validity of an authority given to a Hindu widow by her deceased husband to make successive adoption on failure of the previous adoption, to attain the object for which the power is given, *viz.*, the perpetuation of the deceased's line to discharge the obligations that rests on a pious Hindu. (*Viscount Haldane.*) MADAN MOHAN DEO *v.* PURUSHOTTAM. **41 Mad 855= 45 I.A. 156=8 L.W. 167=35 M.L.J. 138= 5 Pat. L.W. 179=16 A.L.J. 725= (1918) M.W.N. 621=24 M.L.T. 231= 28 C.L.J. 403=20 Bom. L.R. 1041= 46 I.C. 481=23 C.W.N. 177 (P.C.)**

[On appeal from 38 Mad. 1103= 27 M.L.J. 306=24 I.C. 999= 16 M.L.T. 413.]

HINDU LAW—Adoption—Authority.

———*Adoption—Authority to adopt—Multiple adoptions.*

Under the Dayabhaga a testator has not only the power to authorise his widow to make successive adoptions on failure of the prior adopted child, but he can attach to such authority a direction that her estate should not be interfered with or divested during her life. (*Mr. Ameer Ali.*) BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY.

43 Cal. 432=43 I.A. 13=19 M.L.T. 97= 20 C.W.N. 169=30 M.L.J. 110= 23 C.L.J. 169=14 A.L.J. 167= 3 L.W. 252=(1916) 1 M.W.N. 73= 18 Bom. L.R. 347=34 I.C. 892 (P.C.)

[Affirming 41 Cal. 642=24 I.C. 468= 18 C.W.N. 860.]

———*Adoption—Authority to adopt—Revocation.*

Authority was given by an earlier will of the testator to his wife to adopt but he executed a later will containing inconsistent dispositions of property but not revoking earlier will. The latter will was found to be invalid and inoperative. *Held*, that the authority to adopt was not revoked. (*Lord Wrenbury*). VENKATANARAYANA PILLAI *v.* SUBBAMMAL.

39 Mad 107=43 I.A. 20=20 C.W.N. 284= 3 L.W. 177=19 M.L.T. 147=14 A.L.J. 178= (1916) 1 M.W.N. 97=23 C.L.J. 366= 18 Bom. L.R. 372=32 I.C. 373= 29 M.L.J. 351 (P.C.).

[On appeal from 13 I.C. 251= (1911) 2 M.W.N. 519.]

———*Adoption—Authority—Construction—Exercise of power—Consent of four out of five trustees obtained to adoption—Validity of.*

Where a Hindu by his will appointed five persons as trustees and authorised his widow to make an adoption with their consent, an adoption by the widow with the consent of four of them who had proved the will and acted as trustees, the fifth having declined to act, is a valid exercise of the authority. It was no part of the duty of the trustees with reference to the fiduciary position in which they stood to the widow to inform her that she could win her husband's temporal estate by not making an adoption in violation of the dying wishes of her husband and at the price of sacrificing his soul's happiness. (*Lord Shaw*). BAL GANGADHAR TILAK *v.* SHRI SHRINIVAS PANDIT.

39 Bom. 441=42 I.A. 135=13 A.L.J. 570= 19 C.W.N. 729=17 Bom. L.R. 527= 22 C.L.J. 1=29 M.L.J. 34= 18 M.L.T. 1=(1918) M.W.N. 484= 29 I.C. 639=2 L.W. 611 (P.C.).

———*Adoption—Authority to adopt—Construction—Joint power to two widows—Adoption by one, after death of other, invalid.*

A Hindu testator having two widows, authorised them to adopt by his will in these terms; "You (the two widows) should adopt a boy who is our sannihita (near relation) whenever it strikes you that our sammastanam (family

or estate) should continue." Both the wives survived the testator, and one of the widows purported to adopt after the death of her co-widow. *Held*, without determining whether the joint power to adopt given to the two widows was valid, that the power could not be validly exercised by one widow after the death of the other, and that the adoption was therefore invalid. Where a discretionary power of adoption is given to the testator's two widows and the power is to be exercised by the joint donees in agreement, it is clear law independently of English doctrines or decisions that the death of one of the donees puts an end to the joint power. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. 37 Mad. 199 = 41 I.A. 51 = (1914) M.W.N. 299 = 12 A.L.J. 315 = 18 C.W.N 554 = 26 M.L.J. 411 = 15 M L.T 285 = 23 I.C. 166 = 16 Bom. L R. 828 (P C.)

[On appeal from 29 Mad. 437 = 16 M.L.J. 178]

——*Adoption—Authority—Joint power—Senior widow—Rights of.*

A Hindu left all his properties to his two widows by will and authorised them to adopt in these terms :—"They (the widows) may, if necessary adopt a boy of good family according to their necessity." The senior widow alone adopted the appellant after the death of the junior widow. *Held*, that the power of adoption given by the will was a joint and permissive one ; it required a joint agreement to adopt, *i.e.*, a selection of heir and actual adoption by both the widows. The appellant therefore was not an adopted son of the testator. 37 Mad. 199 (P.C.), Foll. (*Mears*, C J. *and Banerji*, J.) LACHMI PRASAD *v.* PARBATI 18 A.L.J. 108 = 54 I C. 910 = 2 U.P.L.R. (H.C) 40

——*Adoption — Authority — Prohibition implied.*

A Hindu left all his property by a will to his two daughters and none else. He made no adoption. The Bombay Vatan Act postponed female members in the matter of succession to the Vatan to male members. So the widow adopted a son. *Held*, the adoption of the widow cannot be upheld as it was against the testator's wishes who had already disposed his property by a will. (*Batchelor and Rao*, JJ.) MALGAUDA PARAGOWDA PATIL *v.* BABAJI DATTU BHAKARE 37 Bom. 107 = 17 I C. 716 = 14 Bom L.R. 1121.

——*Adoption — Authority to adopt—Construction—Existence of natural son.*

Where a Dayabaga Hindu dies leaving a son and a widow and gives authority to the widow to adopt a son either during the lifetime of his natural son or after his death, the authority so given is not invalid and the widow can validly adopt after the death of the natural son, leaving no issue but his own widow, provided she does not divest any estate but her own.

Cases considered. (*Teunon and Greaves*, JJ.) KUMUD BANDHU SAHA *v.* ROMESH CHANDRA SAHA. 46 Cal 749 = 23 C.W.N. 358 = 49 I C. 609 = 29 C.L.J. 214.

——*Adoption—Authority—Construction—Given to two widows by will.*

Where a Hindu testator declared in his will that permission would be granted to his two wives to adopt a boy and that the adopted boy would have to be taken from amongst his near representatives but his wives would adopt whomsoever they would select, it was held that the will conferred an authority on the two widows severally to adopt according to the rule of law, that is, by the senior widow and upon her failure, the junior widow and that there was no restriction on the power of the widows to choose the boy. 12 I.A. 198 ; 12 Cal. 406, Appl. Powers are to be construed in accordance with the intention of the donor or grantor ; that intention is to be gathered from the instrument itself, although a reference may sometimes be had to the circumstances under which it was given. Powers are to be liberally construed in equity in furtherance of the purpose for which they were created. (*Mookerjee and Beachcroft*, JJ.) SARADA PRASAD PAL *v* RAMAPATI PAL. 16 C L J. 804 = 16 I.C. 817 = 17 C W N. 319.

[See also 23 I.C. 166 = 37 Mad. 199 (P.C.)]

——*Adoption—Authority—Power of adoption to two widows—General rule—Prior rights of senior widow* — Anumatipatra—*Power to adopt to two widows—Simultaneous adoption.*

Where two Hindu widows have power to adopt, the senior widow has generally the prior right to adopt and the junior widow cannot adopt unless the senior widow has refused to do so. Where an authority to adopt given to two widows was vague and uncertain. *Held* that the widows were not authorised to adopt simultaneously but the widows were to adopt successively, *i.e.*, in case the senior widow refused to adopt, then the junior might adopt. (*Jenkins*, C.J. *and Woodroffe*, J.) RAJIT LAL KARMAKAR *v.* BEJOY KRISHNA KARMAKAR 39 Cal. 582 = 14 I C. 17 = 15 C.W.N. 440.

[On appeal from 12 I.C. 460 = 38 Cal. 694.]

——*Adoption — Authority—Specified boy—Adoption of another.*

A widow cannot adopt a boy different from that authorised by husband without attempting to follow instructions of husband. *Quaere* :—Whether she can so adopt if the father of the boy she is authorised to adopt, is unwilling to give him an adoption ? 29 Mad. 382 ; 29 M.L J. 144; 22 Bom. 996, Ref.; (1917) M.W.N. 16 ; 32 M.L J. 47. foll. (*Wallis*, C.J. *and Burn*, J.) SINDIGI LINGAPPA *v* SINDIGI BASAPPA. (1917, M.W.N. 16 = 38 I C. 164 = 32 M.L.J. 47.

——*Adoption—Authority—Construction—Will.*

The prohibition to adopt may be express or implied. A provision in a will by a testator,

HINDU LAW—Adoption—Authority.

that if by divine favour I have a male child has reference only to a natural son and does not confer an authority to adopt even by necessary implication. (*Abdur Rahim*, O C.J. *and Phillips*, J.) SHIYALI SUBRAYA CHETTY *v.* CALVE SUBRAYA CHETTIAR.

21 M.L.T. 315 = 37 I.C. 404 = 5 L.W. 740.

———*Adoption—Authority—Construction—Successive adoption.*

Authority to adopt a particular boy empowers a widow to make a second adoption on the death of the first boy. (1 Str Notes 104; 22 Bom. 96; 26 Mad. 681; 29 Mad. 382; 6 I.A. 196; 21 M.I.A. 397, Ref.; 19 Cal; 526; 27 Cal. 996; 37 Mad. 199, *Dist.* Per *Oldfield*, J;—An authority to adopt a particular boy must be construed strictly without any adoption to provide for subsequent eventualities based on the presumed intention of the testator. (*Sankaran Nair and Oldfield*, JJ.) CHENGA REDDI *v.* VASUDEVA REDDI. **29 M L J. 144 = 29 I.C. 770 = 2 L.W. 762**

———*Adoption—Authority—Where ineffective.*

Where the power to adopt was given a long time back and other circumstances intervene and the estate becomes vested in other persons, *i.e.*, in an heir other than the widow or undivided co-parcener the power becomes ineffective and cannot be acted upon. 26 Mad 681, in 627. Foll.) (*White* C.J. *and Oldfield*, J.) KUNDUKURI VEERA BASAVARAJU *v.* KUNDUKURI BALASURIYA. **23 I.C. 3 = (1914) M.W.N. 502.**

[O.A. 43 I.C. 706 = 41 Mad. 998 (P.C.).

———*Adoption—Authority—Construction—Secend adoption.*

Where an authority to adopt is given in general terms and a son adopted in pursuance of it dies, the widow can make a second adoption. But if the son first adopted leaves a widow behind him, the power of making a second adoption could no longer be exercised. A deed of authority to adopt should be construed by the terms of the deed in the light of such extensive evidence as would be admissible in the case of construction of a will. Authority to adopt is to be regarded as general in its nature in the absence of restrictive conditions. 29 Mad. 382, Foll.; 34 All 398; 15 C.W.N. 524; 3 W R. 15 (P.C.) Dist. (*White* C.J. *and Seshagiri Aiyar*, J.) MADANA MOHANA ANANGA BHIM DEV KESARI *v.* PURUSHOTHAMA ANANGA BHIMA DEO. **38 Mad. 1106 = 27 M L J. 806 = 24 I.C. 999 = 16 M.L.T. 413.**

[On appeal 46 I.C. 481 = 41 Mad 836.]

———*Adoption—Authority—Construction.*

Where the will recited "I have no male issue, etc; but have two married wives only. They two should adopt a boy for the perpetuity of my name after me. And at present there is one of my kinsmen, X resident of Burhampur. My wives should adopt him as son after me. If he is not available, my two wives should, with the consultation of each other, adopt any other boy of my own family. If no boy in the family is available my wives should adopt none. If there is a difference of opinion between the two wives as to the boy to be adopted that boy should be adopted whom my younger wife Sonu will choose and "perpetuate my name and manage the property." *Held*, looking to the intention of the testator which was that a certain boy was to be adopted, though both widows are mentioned, the will does not restrain the authority of either, The main object was that a particular boy was to be adopted; the mention of both widows was subservient to the adoption itself. The document gave the widows as far as this boy is concerned no option. It did not allow them any power of selection. Therefore the fulfilment of the wish of the testator by the remaining widow who was the only person who could fulfil it was not against but in accordance with what the testator contemplated. (*Kotval and Prideaux*, A.J.Cs.) AMBADAS *v.* KASHIBAI. **1923 Nag. 27.**

HINDU LAW—Adoption—Burden of proof

———*Adoption—Authority—Construction—Several widows—Specific boy.*

When permission is given to several widows to adopt, the elder widow and on her refusal, the younger one can adopt. Except in the Bombay school of law, an authority to adopt a specified boy cannot be exercised with respect to any other boy. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) SHANKAR KUNBI *v.* SAVITRI. **50 I.C. 599.**

Adoption—Burden of Proof.

———*Adoption—Burden of proof—Treatment by family for long time.*

The onus of proving an adoption is on the party setting it up. But very slight evidence may be sufficient for this purpose, where the alleged adopted son has been treated as such for a long series of years. (*Mookerjee and Cuming* JJ.) KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **36 C.L.J. 434 = 1923 Cal. 18.**

———*Adoption—Burden of proof.*

Where in none of the correspondence which passed between the uncle and the nephew did the former refer to the nephew as his son; nor did he refer to his wife as his mother but on the contrary referred to her as his aunt, and as the nephew was the only other member of the family there was no necessity to adopt him. *Held* the alleged adoption is not proved. (*Scott-Smith and Moti Sagar*, JJ.) MT. UTTAM DAI *v.* DINA NATH. **1923 Lah. 359.**

———*Adoption—Burden of proof.*

The ordinary rule of law is that he who relies on an adoption must establish it but in some cases there may be presumptionin its favour. (*White*, C.J. *and Tyabji*, J.) VENKATA SAMBA SADASIVA DEVAR *v.* PAPAYYA DEVAR. **21 I.C. 787 = (1913) M.W.N. 828.**

HINDU LAW—Adoption—Burden of proof.

———*Adoption—Burden of proof.*

In a suit to set aside adoption by a widow the person setting up adoption is bound to prove whether the suit is for declaration or for possession also. (*White*, C.J. *and Ayling*, J.) RAJAGOPALA REDDY *v.* NATHU GOVINDA.

34 Mad. 329=9 M.L.T. 123=9 I.C. 342= 21 M.L J. 445.

Adoption—Capacity to take

———*Adoption—Capacity to take — Where there are more widows than one—Rule.*

Where there are more than one widow, only one of them can receive the child in adoption so as to step into the position of being its adoptive mother. But a power given to more than one widow to adopt is not necessarily invalid. (*Lord Moulton*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.

37 Mad. 199=41 I A. 51= (1914) M.W N. 299=12 A L J. 318= 18 C.W N 534=26 M L J. 411= 15 M L.T. 285=23 I C 166= 16 Bom. L R. 328 (P.C.)

———*Adoption—Capacity to take—Widow of immature age—Adoption of son of certificated guardian.*

In the case of an adoption by a Hindu widow of immature age, the Court is bound to consider all the circumstances surrounding the adoption set up, which she disputes as not having been made by her of her own free-will; and this is specially so where the adopted son is the son of the certificated guardian of the widow. The onus would lie on the plaintiff to satisfy the Court that all precautions had been taken which were necessary to convince the Court that the adoption was made with the free consent of the girl. 7 B.H.C R. App. i; XX Rel. (*Macleod*, C.J. *and Coyajee*, J.) GANASHAMDAS VISHNUDAS *v.* LAXMIBAI. **24 Bom. L R. 726= 1922 Bom. 218**

———*Adoption—Capacity to take—Person having a Dumb grandson.*

A person having a grandson who is congenitally dumb cannot be treated as sonless and cannot validly adopt. (*Macleod*, C J., *and Shah*, J.) BHARMAPPA *v.* UJJANGAUDA.

23 Bom. L.R. 1520=65 I C 216= 1923 B. 173.

———*Adoption — Capacity to take—Minor widow.*

Adoption by a widow 12½ years of age is invalid under the Hindu Law. *Per Macleod*, C.J., *Obiter.*—A girl younger than 15 cannot validly adopt. (*Macleod*, C.J. *and Shah*, J.) PARVATANA *v.* FAKIRNAIK. **64 I.C 899= 23 Bom. L R. 1076.**

———*Adoption—Capacity to take—Second adoption.*

Hindu widow is not competent to adopt a son during the lifetime of a son previously adopted by her husband. (*Shah and Fawcett*, JJ.) BHAU *v.* NARASAGOUDA.

64 I.C. 614=23 Bom. L.R. 1272.

HINDU LAW—Adoption—Capacity to take.

———*Adoption—Capacity to take—Widow after remarriage adopting her son by first husband for second husband.*

A widow cannot, after re-marriage, give in adoption her son by first husband, especially when she adopts him to her second husband after his death as in such case, the person giving and taking in adoption would be the same individual. (*Macleod*, C.J., *Shah and Hayward*, JJ.) FAKIRAPPA VEERABHADHARAPPA *v.* SAVITREWA SANGAPPA.

62 I C. 318=23 Bom L R. 482 (F.B.)

———*Adoption—Capacity to take—Widow—Unchaste—Sudras.*

Under Hindu Law of Bombay among Sudras, a widow though unchaste can make a valid adoption. 5 Beng. L.R. 362; (1894) P.J. 22, Foll. (*Macleod*, C. J., *and Fawcett*, J.) BASVANT MUSHAPPA HUBLI *v.* MALLAPPA KALLAPPA HUBLI. **22 Bom L R 1400= 59 I C. 800=45 B. 459.**

———*Adoption—Capacity to take—Wife of a lunatic.*

The wife of a lunatic cannot validly adopt under the Hindu Law. (*Macleod*, C.J. *and Fawcett*, J.) RAMKRISHNA *v.* LAXMINARAYAN.

59 I.C. 453 (1)=22 Bom. L.R. 1181.

———*Adoption—Capacity to take—Existence of adopted son.*

Where one adopted son exists a Hindu widow has no right to adopt a son unless and until previous adoption is set aside. (*Macleod*, J.) BHUJAGONDA *v* BALA BHOKARE.

44 B. 627=57 I C. 513=22 Bom. L.R. 817.

———*Adoption—Capacity to take—Minor widow.*

Under Hindu Law a Hindu widow of the age of twelve who has not reached puberty cannot make a valid adoption. The adopting widow must have reached such an age of discretion, that she must be able to realise the importance of her act and to make up her own mind as to the person she ought to adopt. There may be circumstances which will enable the Court to consider whether a widow has reached the age of discretion. That she has attained puberty may be one circumstance, but not necessarily the only one. The actual age of the widow may be another test and the most important one. (*Macleod*, C.J. *and Heaton*, J.) MURUGAPPA BASAPPA *v.* KALAVA GOLAPPA.

44 Bom. 327=55 I.C. 361=22 Bom. L.R. 91.

———*Adoption—Capacity to take—Murderer—Rights of adopted son.*

Under the Hindu Law a person who has become *patita* owing to his having committed a murder is not disqualified from adopting a son. Such a son can inherit to the property of his adoptive father who had already separated and had obtained his share before his disqualification. (*Scott*, C.J. *and Shah*, J.) VAMAN *v.* KRISHNAJI. **51 I C. 363= 21 Bom. L.R. 427.**

HINDU LAW—Adoption—Capacity to take.

———*Adoption—Capacity to take—Age of widow.*

A widow of 15 years is sufficiently mature to adopt. A minor who has arrived at the age of discretion is a competent person to adopt under S. 2 (*a*) of the Majority Act. (*Scott*, C.J. *and Shah*, J.) BASAPPA *v.* SHRIDRAMAPPA.
43 Bom. 481=50 I.C 736=
21 Bom. L.R. 217.
[But see 40 I.C. 518=40 Mad, 925.]

———*Adoption—Capacity to take—Existence of natural son.*

In the presence of a natural son of a deceased Hindu, his widow cannot be presumed to have any authority from him to adopt and if she does adopt a boy, the adoption will be invalid. (*Heaton and Shah*, JJ.) DALPATSINGJI *v.* RAISINGJI NARAHSINGJI. **39 Bom 528=**
29 I C. 943=17 Bom. L.R. 566.

———*Adoption—Capacity to take—Convert.*

But adoption is not necessarily inheritance or succession though it leads in inheritance or succession. Consequently a Mahomedan convert does not presumably carry with him the law of adoption. (*Chandavarker and Heaton*, JJ.) BAI MACHUBAI *v* BAI HIRA BAI.
35 Bom. 264=10 I C. 816=13 Bom. L R. 231.

———*Adoption - Capacity to take—Successive adoptions.*

Adoption of a second son in the lifetime of first adopted son is invalid. (*Scott-Smith*, J.) SHANTI PRASAD *v.* DHANDEVI.
80 I.C. 113=42 P W.R 1919.

———*Adoption—Capacity to take—Father—Rights of daughter in law.*

Adoption is tantamount to a bequest and a daughter-in-law who cannot contest the power of testamentary disposition of her father-in-law is therefore not competent to challenge an adoption made by him. (*Chevis and Shadi Lal*, JJ.) BASANTI *v.* NATHA. **12 P.R. 1916=**
53 P.W.R. 1916=33 I.C. 147=
33 P L R. 1917

———*Adoption—Capacity to take—Minor widow—Adoption invalid.*

Adoption by a minor widow, who has not attained sufficient maturity of understanding the nature of the act is invalid and she can recover her husband's property from the adoptee unless his position has been prejudiced. In such case there is no estoppel against her. 34 All. 398 (P.C.), Dist. (*Sadasiva Aiyar and Spencer*, JJ.) RAMACHARI *v.* SARASWATI AMMAL. **12 L W. 544=60 I C 246=**
(1920) M W.N 721.

———*Adoption—Capacity to take—Minor—Widow of eleven years having authority—No exercise of discretion—Absence of disinterested advice from guardian.*

A Hindu widow of about eleven years of age who had been authorised by her husband's will to adopt if and when she chose, purported to adopt a boy and it was found that at her age, at the time, she was incapable of exercising any discretion and that her father who acted as her guardian did not give disinterested advice in the matter of adoption. *Held*, that the adoption was void and was incapable of being validated by subsequent ratification. 18 Cal. 69; 13 Mad. 214; 1 Cal. 289 (P.C.); 29 Mad. 437; 37 Mad. 199 (P.C.); 27 Cal. 996 (P.C.); 1 B.L.R. 49 (F.B.); 15 W.R. 548, Ref. Where it is left to the sole discretion of a widow to adopt her discretion could not be displaced by her guardian's advice however disinterested. 13 Mad. 214, Diss. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATTIRAJU *v.* PALAMSETTY VENKATASWAMI. **40 Mad. 925=32 M.L.J. 119=**
40 I C. 518=5 L.W. 603.

HINDU LAW—Adoption—Ceremonies.

———*Adoption—Capacity to take—Lunatic.*

Adoption is not an alienation of property like a lease or mortgage. It affects only status. Therefore a person for whose estate a manager has been appointed under the Lunacy Act is not debarred from making an adoption till the order is set aside. A lunatic can adopt during an interval of sound mind; the burden of proving which is on the person setting up the adoption. (*Wallis*, C. J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. **3 L.W. 290=**
33 I C. 578=19 M.L.T. 243.

———*Adoption—Capacity to take—Presence of a congenitally idiot son.*

The adoption of a son is not invalid even though there is congenitally idiot natural born son. (*Mitra and Prideaux*, A.J.Cs.) RAIJA *v* BHIMRAO. **37 I C. 647.**

———*Adoption—Capacity to take—Husband—Consent of wife.*

A Hindu governed by Mitakshara can adopt even without consent of his wife. (*Stuart*, A.J.C.) NARAIN DAT *v.* GOPAL DAS.
33 I C. 361=18 O.C. 341.

———*Adoption—Capacity to give—Father—Mother.*

The father sued for the custody of the child whose mother he deserted and which was given in adoption to another by the mother. *Held*, (1) the plff. could not be said to have relinquished his right since he was in a position to look after the child at the time of the alleged adoption and that such adoption made without his consent was not valid; and (2) even if he had acquiesced he could cancel the adoption. (*Parlett*, J.) MA THE *v* MG PO TUN.
17 I.C. 962=5 Bur. L T. 171.

Adoption—Ceremonies.

———*Adoption—Ceremonies—Datta Homam—Brahmins.*

The performance of the ceremony of Datta Homam is not essential, even among Brahmins, to the validity of an adoption, where the adopted son belongs to the same gotra as the adoptive father. 11 Mad. 5; 4 M.H.C.R. 165, Ref

HINDU LAW—Adoption—Ceremonies.

24 Bom. 221, Appr. (*Lord Shdw*). BAL GANGADHAR TILAK *v.* SHRI SHRINIVAS PANDIT. **39 Bom 441=42 I.A. 135= 13 A.L J 510=19 C.W.N. 729= 17 Bom. L.R. 527=22 C.L J. 1= 29 M.L J. 34=18 M.L.T. 1= (1915) M.W.N. 484=29 I.C. 639= 2 L.W. 611 (P.C.).**

———*Adoption—Ceremonies — Performance of—Presumption.*

Where an adoption has taken place more than 48 years ago and the adoption has not been challenged during that time by any member of the family interested in so doing and it was urged that the adoption was invalid for non-performance of dattahoman, *held* that it was permissible to presume from the fact that the adoption had not been challenged for such a long period that if the ceremony was necessary, it must have been performed, 29 A. 181 ; 29 A. 519, Rel. (*Kanhaiya Lal and Sulaiman*, JJ.) CHHOTE LAL *v.* CHANDRA BHAN. **45 All. 59=1923 All. 176.**

———*Adoption - Ceremonies — Giving and taking.*

In the absence of proof of a giving and taking of an alleged adopted son no amount of acknowledgment would make him an adopted son. But where there is evidence of such giving and taking, evidence of acknowledgment can be relied on in proof of the adoption. (*Woodroffe and Walmsley*, JJ.) KRISHNA BHAMINI DASI *v.* BROJA MOHINI. **65 I.C. 38=25 C.W.N.403**

———*Adoption— Ceremonies — Sudras — Kayasthas.*

Kayasthas are Sudras according to law prevailing in Bengal. Mere giving and taking of a son without any religious ceremony gives validity to an adoption among the Sudras. Pollution on account of birth does not vitiate adoption among Sudras. It affects only religious ceremonies which are not necessary among them. (*Chaudhuri and Newbould*, JJ.) ASITA MOHAN GHOSE *v.* MOLIAN GHOSE. **35 I C. 127=20 C.W.N. 901.**

———*Adoption — Ceremonies* — Sagotras—Datta Homam,

Among the twice-born classes *Datta Homam* is not essential when the adoptive father and the adopted child belong to the same gotra. Authorities reviewed. (*Mookerjee and Beachcroft*, JJ.) KATKI *v* LALPATI PUJARI. **20 C.L.J, 319=27 I.C, 39=20 C.W.N. 19.**

———*Adoption—Ceremonies—Dattaka form —Jains—Rights of adopted son.*

There is nothing in *Manak Chand* v. *Munna Lal*, 95 P.R. 1909 to show that Jains cannot adopt in *Dattaka* form or that an adopted son among Jains can, in no case, become a member of the family of his adoption. (*Broadway and Abdul Qadir*, JJ.) GOPI MAL *v.* PANNA LAL. **72 I.C. 425.**

HINDU LAW—Adoption—Ceremonies.

———*Adoption—Ceremonies — Giving and taking—Execution of deed.*

Formal, but not necessarily complicated ceremonies of giving and taking, are essential for validity of an adoption. An adoption deed followed by appropriate treatment does not of itself constitute valid adoption. (*Shadi Lal and Le-Rossignol*, JJ.) GANGA RAM *v.* AMIR CHAND. **50 I.C. 355.**

———*Adoption—Ceremonies*--Datta Homam.

Datta Homam is not essential to the validity of an adoption in the Punjab. (*Kensington*, O.C.J. *and Beadon*, J.) DIWANCHAND *v.* DWARKANATH. **271 P.L.R. 1913= 20 I C. 303=175 P W.R. 1913.**

———*Adoption— Ceremonies— Giving and taking—Suaras.*

Corporeal delivery and acceptance of the child is the essence of adoption among Sudras. (Also 6 Cal. 381 ; 19 Cal. 452, Foll.) Manifestation of intention to adopt a particular boy cannot be regarded as a step in furtherance of adoption and decision in 7 Mad. 548 cannot be extended to the Sudra adoption. A Sudra widow cannot adopt in pursuance of a mere intention expressed by her husband during his lifetime. Unless the boy had been given and taken corporeally by the husband, the widow cannot do so and validate the adoption. 6 Cal. 381 (P.C.) ; 19 Cal. 452 (P.C.), Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) KUPPUSAMI REDDI *v.* VENKATALAKSHMI AMMAL. **18 M.L.T. 434=31 I.C. 855= (1916) M.W.N. 960.**

———*Adoption—Ceremonies—Jains.*

No religious ceremonies are required to the validity of adoption among the Jains, as they do not believe the Hindu doctrine of the spiritual efficacy of sons. But the secular ceremony of giving and taking must be performed. (*Drake-Brockman*, J.C.) JAMUNABAI *v.* JUHARMAL. **56 I.C. 81.**

———*Adoption—Ceremonies—Jains.*

Jains follow Hindu Law in cases of adoption so that giving and taking make a valid adoption. The adoptee must be handed over to the adoptive parent. If the adoptee is grown up he need not be kept on the lap of the adoptive parent. Mere sitting by the side is sufficient. (*Mitra and Prideaux*, A.J.Cs.) JEEVRAJ *v.* SHEO KUMARBHA. **56 I.C. 65.**

———*Adoption—Ceremonies*--Datta Homam *Sudras.*

No religious ceremonies are necessary, not even *Datta Homam* for the validity of an adoption among Sudras. 5 Mad. 358 ; 5 Cal. 770 (P.C.), Rel. But giving and taking accompanied by actual corporeal delivery of the boy is absolutely essential for valid adoption. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) SHANKAR KUNHI *v.* SAVITRI. **50 I.C. 599**

HINDU LAW—Adoption—Ceremonies.

———*Adoption—Ceremonies*--Datta Homam *—Giving and taking—Deed—Authority to adopt —Agreement conferring benefit on adoptive mother, if valid.*

The absence of *Datta Homam* would not amongst the twice born classes, make an adoption invalid. In Berar, the husband's authority to adopt is presumed in the absence of a prohibition. There must at least be a giving and taking to constitute an adoption. A mere deed of adoption cannot confer the rights of an adopted son. (*Mitra*, A.J.C.) CHANDRABAGABOI *v.* RAMCHAND. **46 I C. 860.**

———*Adoption—Ceremonies—Sagotras.*

The performance of requisite ceremonies, *e.g.*, *datta homan* for adoption can be dispensed with if the adoptive father and the adopted boy belong to the same gotra. (*Stuart and Kanhaiya Lal*, A.J.C.) LAL TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD. **47 I.C. 223=5 O.L.J. 294.**

———*Adoption—Ceremonies*--Datta Homam *—Necessity of—Agarwala Banias.*

Among Agarwala Banias the non-performance of *datta homam* does not vitiate an adoption. (*Lindsay*, J.C.) GANGA DEI *v.* GOKAL DAS. **43 I.C. 318=20 O.C. 356.**

———*Adoption—Ceremonies*—Putreshti Jag *—Necessity for.*

Putreshti Jag ceremony is not essential to the validity of an adoption even amongst the regenerate classes. An adoption is valid if *upanayanam* is not performed in the natural family although the other initiatory rights including tonsure have already taken place in the natural family of the adopted son. 20 C.W.N. 19 ; 2 Pat. L.J. 481 ; 20 C.W.N. 901, Referred to. (*Miller*, C.J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI. **2 P 469=4 P.L.T 427= 1 P.L.R. 201=1923 Pat. 97= 1923 P. 423.**

———*—Adoption — Ceremonies— Kshatriyas —Brother's son—Adoption six days after the birth.*

There is no prohibition among Kshatriyas against the adoption of a brother's child before the 11th day after birth by reason of the doctrine of pollution, or before the 21st day by reason of the impurity of the body of the child. Where religious rites are not a necessary requisite, *e.g.*, where a Hindu of one of the twice-born castes adopts a boy of the same gotra as himself, the omission of such rites cannot affect the validity of the adoption. The face of pollution, which only affects the degree of merit attached to the religious rites, is also immaterial to the validity of the adoption. (*Mullick and Atkinson*, JJ.) SREEMATTY LAKSHIMIMALAI JOMAMANI BAHURIA *v.* UDIT PARTAP SINGH. **49 I.C 215= 3 P.L.J. 499.**

———*—Adoption—Ceremonies—Putreshtiyaga unessential—Twice-born classes—Adoption from different gotra.*

HINDU LAW—Adoption—Customary form.

Putreshtiyaga ceremony, unlike *datta homam* is a matter of form and not essential to an adoption among twice born castes, at least when the adopter and the adopted son belong to the same gotra in which case even the *Datta Homam* has been held to be unnecessary. 16 W.R. 179 ; 20 C.W.N. 19 ; 20 C.W.N. 901, Foll. (*Mullick and Atkinson*, JJ.) SHEO LOTAN RAI *v.* BHIRGOON RAI. **2 P.L.J. 481=41 I.C. 373=1 P.L.W. 784.**

Adoption—Customary Form.

———*Adoption—Customary form—Dhusars —Onus of proof of custom.*

In a suit between Dhusars residing in the Wardha District of the Central Provinces, but originally coming from the district of Gurgaon in the Punjab, for a declaration that the adoption of the defendant, an orphan boy, was invalid in law :—*Held*, that the evidence adduced as to custom was sufficient, as between the parties, to entitle the Court to dismiss the suit. (*Sir John Edge*). RAM KISHORE *v.* JAINARAYAN. **17 N.L.R. 163=64 I C. 782= 48 I.A. 405 (P.C.).**

———*Adoption—Customary form*—Illatom *—Adoption of son-in-law when son alive— Reddis—Komma caste.*

There is no analogy between adoption proper, the object of which is primarily religious, and an *illatom* affiliation, the object of which is secular only, and the rules of Hindu Law do not apply to the latter, which is regulated solely by custom. *Illatom* affiliation is valid even though the affiliator has a son or an undivided brother living. The custom of taking an *illatom* son-in-law is the same in the Kamma caste and in the Reddi caste. (*Sir John Edge.*) NALLURI KRISTNAMMA *v.* KAMEPALLI VENKATASUBBAYYA **42 Mad. 803=46 I.A. 168=17 A L J. 662= 37 M L.J 1=26 M L T. 36= 23 C.W.N 1010= 0 C L.J 145= 10 L.W. 193=21 Bom L R. 906= 51 I.C. 1=(1919) M.W.N. 651 (P.C.). [On appeal from 26 I.C. 69.]**

———*—Adoption—Customary form—Agarwal Banias of Zira—Custom at variance with Hindu Law — Evidence of — Concurrent findings.*

The Courts in India concurrently found that in matters of adoption the Agarwal Banias of Zira (Punjab) do not, in matters of adoption, follow the general rules of Hindu Law but that by the custom amongst them, an unequivocal declaration of adoption followed by the treatment of that boy as an adopted son is sufficient to constitute a valid adoption. *Held*, that the evidence, though limited, was sufficient as between the parties and those claiming through or under them, to justify the finding of Courts below ; but the case could not be a satisfactory precedent if in any future litigation between other parties, fuller evidence of the

HINDU LAW—Adoption—Customary form.

custom should be forthcoming. (*Sir John Edge.*) CHIMEN LAUL *v.* HARI CHAND.
40 Cal. 879=40 I A. 157=17 C.W.N. 885=126 P.W.R. 1913=187 P L R, 1913=18 C.L J. 70=14 M L T 83=102 P.R. 193=(1913) M W.N. 309=19 I.C. 639=15 Bom. L.R. 646 (P C.).

———*—Adoption — Customary form—Jains —Ceremonies—Orphan boy, if can be adopted.*

Among the Jains, adoption is a mere temporal or secular arrangement and has no spiritual or religious object or significance. The adoption of an orphan boy is valid by custom among them. (*Macleod*, C.J *and Fawcett*, J.) PARSHOTTAM GANPAT *v.* VENICHAN GANPAT. **45 Bom. 751=61 I.C. 492=23 Bom. L.R. 227.**

———*—Adoption—Customary form—Dvyamushayana.*

Dvyamushyana adoption must be made only by express agreement. Otherwise the presumption is that adoption is in ordinary form. Such express agreement must be clearly proved. (*Batchelor and Shah*, JJ.) LAXMI PATIRAO SHRINIVAS *v.* VENKATESH TIRMAL **41 Bom. 315=38 I C. 552=19 Bom. L R. 23.**

———*—Adoption—Customary forms--Dvyamushyana—Presumption.*

If the only son of a brother is given in adoption, the adoption is not necessarily in dvyamushyana form. (*Batchelor and Shah*, JJ.) LAXMI PATI RAO SHRINIVAS *v* VENKATESA TIRMAL. **41 Bom. 315=38 I C 552=19 Bom. L R. 23.**

———*—Adoption—Customary form*—Illatom *—Strict proof.*

The claim that a person has been taken as *illatom* son-in-law must be proved by very reliable evidence. (*Wallis*, C.J. *and Tyabji*, J.) PANDA PATYYA *v.* PANDA VENKAMMA **2 L.W. 485=29 I C. 54=17 M L T. 393.**

———*—Adoption —Customary form*—Illatom *—Existence of natural son.*

Under the Hindu Law the adoption is invalid when the adoptive father has a son. But the *illatom* adoption itself being opposed to Hindu Law, no presumption of the invalidity of an *illotom* adoption arises on the ground of the existence of a natural son at the time of the adoption. (*Sankaran Nair and Spencer*, JJ.) NALLURY KRISHNAMMA *v.* KAMAPALLI RAMALINGAM. **26 I C. 51.**

[Affirmed on appeal 42 Mad. 805.]

———*—Adoption — Customary form*—Illatom *—Proof.*

An *illatom* agreement can be implied from the circumstances of a case and is a valid contract. (*Subramania Iyar and Davies*, JJ.) VACHOONE BALARAMI REDDY *v.* VACHOORE RAMANNA. **18 I.C.698=13 M.L.T. 113.**

———*—Adoption — Customary form*—Illatom *—What constitutes.*

HINDU LAW—Adoption—Dancing girls.

Living in a father-in-law's house and assisting his widow after her husband's death does not constitute an *illatom* for which a specific agreement is necessary. (*Muthusamy Iyar and Best*, JJ.) GADIYAM NARAYUDU *v* MALLAVARAPU VENKAMMA. **11 M L T. 121=13 I C 856=22 M L J. 265.**

———*—Adoption—Customary form*—Illatom.

Illatom adoption is not invalidated by the marriage being celebrated after the death of the taker. (*Wallis and Munro*, JJ.) VENKAYALPATTI *v.* NEGANDLA. **11 I C 25=(1911) 2 M W.N. 193.**

———*—Adoption—Customary form*—Putrika putra.

Although the practice of adopting the *putrika putra* son has fallen into disuse, it is nevertheless recognised by the Mitakshara Law. According to the Hindu Law a son affiliated in the *putrika putra* form is a valid substitute for a son. The form is by no means become obsolete and effect cannot legitimately be refused to an affiliation in the *putrika putra* form if it is made. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL TRIBAVAN NATH SINGH *v* DEPUTY COMMISSIONER, FYZABAD. **47 I.C 223=8 O L J. 294.**

———*—Adoption—Customary form—Appointment.*

It is doubtful whether the obsolete custom of appointing daughters to raise issue can be revived. Even if revived it must be conclusively proved. Mere description in a deed of a daughter as *putrika* and her sons as *putrika putra* is not sufficient proof. *A putrika* if not affected by all the liabilities incident to a son and so is not liable to discharge the father's debts though the whole joint family may be liable. (*Atkinson and Kingsford*, JJ.) BABUI RITA KUER *v.* PURAM MAL. **1 Pat L.J. 581=38 I C. 44=2 Pat L.W. 393.**

Adoption—Dancing Girls.

———*Adoption—Dancing girls.*

Naikins (Prostitute) adoption of a daughter was held to be invalid. (*Batchelor and Rao*, JJ.) HIRA NAIKIN *v.* RADHA NAIKIN **37 Bom. 116=17 I C. 834=14 Bom. L.R. 1129.**

———*Adoption—Dancing girls —Prostitution—Validity of adoption—Estoppel.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition based on the ground of public policy. (*Ayling and Coutts-Trotter*, JJ.) KANDAIYA PILLAI *v.* CHOKKAMMAL **28 M.L T. 106=39 I C 214=12 L.W. 7.**

———*Adoption—Dancing girls—An adoption by a dancing girl.*

Adoption of a girl by dancing girl is valid if it is not for making her a prostitute. Calling

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an adopted girl Abhimanaputhri does not make her any the less an adopted daughter among dancing girls and her right of succession to her adoptive mother is not affected. (*Abdur Rahim and Ayling*, JJ.) NAGAMUTHU PILLAI *v.* DASI SUNDARAMMA. **32 I.C. 743.**

———*Adoption—Dancing girls—Validity of.*

Quaere—"Whether adoption of dancing girl by dancing girl is valid. (23 M.L.J. 493, Foll.) (*Sadasiva Aiyar and Napier*, JJ.) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. **29 I.C. 974.**

———*Adoption—Dancing girl—Since married.*

The adoption of a girl by a Hindu married woman is invalid, even though the woman was once a dancing girl. A dancing girl when married and leading a family life cannot be treated as a dancing girl. Per *Sadasiva Aiyer*, J.—It is illegal for a prostitute to adopt a minor girl much more so if the prostitute has married and tried to lead the life of a moral married woman. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) GUDDATTI REDDI *v* GANAPATHI KANDANNA. **23 M.L.J. 493 = 12 M.L.T. 467 = 17 I.C. 422 = (1912) M.W.N. 1138.**

Adoption—Eligibility.

———*Adoption—Eligibility—Orphan.*

According to the law of the Mitakshara, as recognised by the Benares school, the adoption of a boy whose parents are both dead is invalid. (*Sir John Edge.*) RAMKISHORE *v* JAINARAYAN. **17 N.L.R. 163 = 64 I.C. 782 = 48 I.A. 405 (P.C.)**

———*Adoption — Eligibility for — Sister's son.*

Semble.—As a general rule of Hindu Law a man cannot adopt his sister's son but there might be a custom to the contrary. (*Sir John Edge*). KANHAI LAL *v.* BRIJ LAL. **40 All. 487 = 45 I.A. 118 = 22 C.W.N. 914 = 8 L.W. 212 = 24 M.L.T. 23 = 35 M.L.J. 459 = 16 A.L.J. 825 = (1918) M.W.N. 709 = 28 C.L.J. 394 = 5 Pat. L.W. 294 = 47 I.C. 207 = 20 Bom. L.R. 1048 (P.C.)**

———*Adoption—Eligibility—Brother's son.*

Under an authority given by her husband a widow can validly adopt her brother's son. (*Lord Shaw*). BHAGWATI PRASAD SINGH *v.* NAND PRASAD SINGH. **33 I.C. 596 (P.C.)**

———*Adoption—Eligibility — Test — Brother's son—Validity—Dattaka Mimamsa.*

A Hindu widow making an adoption by virtue of her deceased husband's authority can validly adopt her brother's son or grandson. As the adoption by the widow is not in her own right and to herself, but to her deceased husband, the test of eligibility of the adopted son must be the test which would have applied had the adoption been made by the husband himself in his lifetime. The rule of Hindu Law

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that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. 27 All. 417, Appr.; 3 Mad. 15; 27 All. 433; 22 Bom. 973, Ref. (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUMAR. **37 All. 359 = 19 C.W.N. 841 = 18 A.L.J. 721 = 17 Bom. L.R. 549 = 42 I.A. 155 = 22 C.L.J. 190; 29 M.L.J. 63 = 18 M.L.T. 61 = 2 L.W. 881 = 29 I.C. 617 = (1915) M.W.N. 514 (P.C.)**

———*Adoption — Eligibility for — Sister's son.*

In the absence of a special custom the adoption of a sister's son is invalid according to Hindu Law. (*Richards*, C.J. *and Banerjee*, J.) RAGHUNATH DAS *v.* KISHEN LAL. **28 I.C. 855.**

———*Adoption—Eligibility—Married man—Sudras.*

Adoption of a married man is not valid even among *Sudras*. (*Griffin and Chamier*, JJ.) JHUNKA PRASAD *v.* NATHU. **36 All. 263 = 18 I.C. 960 = 11 A.L.J. 293.**

———*Adoption — Eligibility — Daughter's son.*

A daughter's son can be adopted by a Sudra. (*Richards*, C.J. *and Bannerji*, J.) LALA *v.* NAHAR SINGH. **34 All. 668 = 16 I.C. 181 = 10 A.L.J. 299.**

———*Adoption — Eligibility — Marriageability test.*

A step-mother's brother's grand daughter's son can be taken in adoption as it does not offend against the marriage possibility test. (*Richards*, C.J. *and Banerjea*, J.) RAGHUBIR DAYAL *v.* RANI KUNWAR. **14 I.C. 48.**

———*Adoption—Eligibility—Only son.*

A Hindu widow can make a valid gift of her only son in adoption. 25 B. 539, Foll. (*Macleod*, C.J. *and Crump*, J.) GANPATI SHANKARAPPA *v.* KRISHNAPPA. **1924 Bom. 159.**

———*Adoption—Eligibility—Sister's son—Leva Patidars of Gujarat.*

Among the Leva Patidars of Gujarat, who are Sudras, the adoption of a sister's son is valid. (*Macleod*, C.J. *and Crump*, J.) KAHANDAS NARAN *v.* JIVAN. **25 Bom. L.R. 510 = 1923 Bom. 427.**

———*Adoption—Eligibility—Sister's son—Nullity—Void adoption confers no title.*

Among the Deshastha Brahmins, the adoption of the sister's son is a nullity. An adoption is either effectual for all purposes or a nullity. A void adoption confers no right and creates no disability. Hence where a person is once adopted which adoption is null and void, there is no bar to his being validly adopted a second time into another family. (*Macleod*, C.J. *and Crump*, J.) BHAU ABAJI DESHPANDE *v.* HARI RAMCHANDRA PATKI. **25 Bom. L.R. 411 = 1923 Bom. 301.**

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———*Adoption — Eligibility* — Daughter's husband.

Under the Hindu Law as administered in the Bombay Presidency, the adoption of a daughters's husband is valid. (*Macleod*, C.J. *and Shah*, J.) SITABAI NAGESH DESAI *v* PARVATIBAI NAGESH. **24 Bom L.R. 748 = 47 B. 35 = 1922 Bom. 239.**

———*Adoption—Eligibility—Sister's son—Rule of Virudda Sambandha.*

Per *Justice Shah*, J.—The question as to whether the rule of Viruda Sambandha applies to the case of an adoption of a sister's son when the adoptive father has left his family of birth long before the date of adoption and has passed the adoption in another family or in another branch of the same family was raised but not decided. (*Shah and Fawcett*, JJ.) BHAU *v.* NARASAGOUDA **64 I.C 614 = 23 Bom. L R. 1272**

———*Adoption—Eligibility for — Father's first cousin.*

The adoption of a father's first cousin is valid. The rule of Viruddha Sambhanda is not applicable to the case. 39 Bom. 410 : 22 Bom. 973 ; 37 All. 359, Ref. (*Scott*, C.J. *and Shah*, J.) MALLAPPA *v* GANGAVA. **43 Bom. 209 = 49 I C. 517 = 21 Bom. L.R. 17.**

———*Adoption— Eligibility — Half-brother —Dattaka Mimamsa.*

Under the Hindu Law, the adoption of a half-brother is not invalid. The opinions of Nandapandita when not supported by any text of the Smriti writers are generally speaking recommendatory and not mandatory. (*Heaton and Shah*, JJ.) GAJANAN *v.* KSHINATH. **39 Bom. 410 = 28 I.C. 673 = 17 Bom. L.R. 372.**

———*Adoption — Eligibility—Father's sister's son.*

The adoption of a father's sister's son is valid. As the rule that no one could be adopted whose mother the adopter could not have legally married is restricted to cases of daughter's son, sister's son, and mother's sister's son. 32 Bom. 619 ; 36 Bom. 533, Foll. (*Batchelor and Shah*, JJ.) RAMAKRISHNA GOPAL JOSHI *v.* CHIMANJI VYANKATESH. **21 I C. 34 = 13 Bom L R. 824.**

———*Adoption—Eligibility—Orphan.*

The adoption of an orphan is invalid in Hindu Law. (*Scott*, C J. *and Chandavarkar*, J.) SHRINIVAS *v.* BALWANT VENKATESH. **37 Bom. 513 = 20 I C 162 = 15 Bom. L R. 533.**

———*Adoption—Eligibility—Tests— Viruddha Sambhanda—Mother's brother's son.*

Under Hindu Law, the rule that no one can be adopted whose mother the adopter could not have legally married is now limited to the cases of a daughter's son, a sister's son, and a mother's sister's son. 32 Bom. 619, Foll. Adoption of the son of his mother's brother is valid.

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(*Chandavarkar and Batchelor*, JJ.) YAMNAVAR GOVIND APPAJI *v.* LAXUMAN BHIMRAO. **36 Bom. 533 = 16 I.C. 180 = 14 Bom. L.R. 843.**

———*Adoption— Eligibility—Boy of another sub-caste—Sudras.*

An adoption, by a Sudra of one sub-division of another person, belonging to another subdivision of the same caste is valid. The question of inter-marriage and the question of adoption between two classes of Sudras is just the same question. (*Wilson and O'Kinealy*, JJ.) GIRISH CHUNDER ROY *v.* MAHOMED SHAHJED CHOWDHRY. **25 C.W.N. 634.**

———*Adoption— Eligibility—Child in arms.*

Adoption of a child of 13 days is not illegal but practically inconvenient. (*Richardson and Huda*, JJ.) BEJOY SINGH *v.* MATHURIYA DEBYA. **36 I.C. 97.**

———*Adoption — Eligibility — Daughter's daughter's son—Mitakshara School, Western India.*

The adoption of daughter's daughter's son is valid under the Mitaksbara of Hindu Law prevailing in Western India. (*Chitty and Richardson*, JJ.) MADHU SUDAN SINHA *v.* KALI CHARAN SINHA. **46 I.C 246 = 27 C.L.J. 119.**

———*Adoption—Eligibility—Married boy.*

A married boy cannot be validly adopted among any class of Hindus. 10 B. 80 ; 13 M. 129 ; 32 A. 247 ; 35 A. 263, Rel. (*Chevis*, J.) HIRA *v.* HARDAT SINGH. **47 P.L R. 1922 = 1923 Lah. 23.**

———*Adoption—Eligibility--Daughter's son —Custom of khatris in Amritsar.*

Under Hindu Law the adoption of a daughter's son is invalid but according to the custom of the *khatris* in the town of Amritsar, it is valid. (*Shadi Lal*, C J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARANDAS. **2 Lah. 69 = 21 P.L.R. 1921 = 59 I.C. 256 = 15 P.W.R. 1921.**

———*Adoption—Eligibility—Orphan.*

An orphan cannot be adopted. It is only the parents of a boy that can give him in adoption. (*Shah Din*, C.J. *and Le-Rossignol*, J.) RAMJI DAS *v.* DURGA PERSHAD. **43 I C. 90 = 6 P R. 1918.**

———*Adoption—Eligibility—Person already adopted.*

It is not competent to the widow's of two persons even if brothers to take the same person in adoption either at the same time or at different times. (*Rattigan and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. **27 P W R. 1915 = 27 I.C. 701 = 57 P.L.R. 1915.**

———*Adoption—Eligibility—Only son.*

According to Hindu Law the adoption of an only son is valid. (*Shahdin and Scott-Smith*, JJ.) WARYAM SINGH *v.* JIWAN SINGH. **19 I C. 284 = 205 P.L.R. 1913.**

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——*Adoption—Eligibility— Orphan—Adoptive father if estopped from questioning adoption.*

An adoption of an orphan is invalid and the adoptive father himself may dispute its validity. There can be no estoppel where both sides know the full facts. A representation as to a matter of law, *viz.*, the validity of an adoption cannot give rise to an estoppel. 11 B. L.R. 291, 395 ; 21 M L.J. 500, 503, Rel. (*Ayling and Odgers*, JJ) RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. (1922) **M W N. 481 = 1923 Mad. 11.**

——*Adoption—Eligibility—Orphan given by elder brother.*

The principle of *factum valet* does not validate the adoption of an orphan son given in adoption by his elder brother. (*Ayling and Odgers*, JJ.) BANDARU MARAYYA *v.* BANADARU RAMLAKSHMI. **44 Mad 260 = 39 M L.J. 495 = (1920) M W.N 708 = 12 L.W. 613 = 60 I.C. 141 = 28 M L T. 428.**

——*Adoption — Eligibility — Daughter's son—Custom—Madras Presidency.*

Adoption of a daughter's son or a sister's son is valid by custom among the Brahmins of the Andhra portion of the Madras Presidency as it is in the southern districts. (*Oldfield and Phillips*, JJ.) (VADREN RANGANAYAKAMMAGARU) *v.* SOMASUNDARA RAO. **59 I.C. 609 = 43 Mad. 876.**

——*Adoption — Eligibility — Brother's daughter's son—Kshatriyas of South Canara.*

The adoption of brother's daughter's son is allowed by custom among the members of the community of Singas presumably of impure Kshatriya caste who originally migrated from Rajputana and remained settled in South Canara for a very long time. 4 Bom. L.R. 140; 27 C.L.J. 119 and 36 Bom. 533, Ref. (*Sadasiva Iyer and Spencer*, JJ.) SOORATHA SINGHA *v.* KANAKA SINGHA. **43 Mad. 867 = 12 L.W. 245 = 59 I C 585 = (1920) M W.N. 528.**

——*Adoption—Eligibility.*

Females could not be taken in adoption even by dancing girls. Such adoption is illegal, as it has prostitution for its object. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) GUDDATTI REDDI *v.* GANAPATHI KANDANNA.
23 M.L J. 493 = 12 M L.T. 467 = 17 I C. 422 = (1912) M W.N. 1138.
[Also 25 I.C. 987 = 38 Mad. 1144.]

——*Adoption—Eligibility for—Orphan.*

No one but the parent of a child can give him away in adoption either by himself or by any one else. 2 M H.C.R. 129; 6 B H.C.R. 88; 10 B.H.C.R. 268, Ref. There is no presumption in law that an apparent adoption, which had taken place long ago and was throughout acquiesced in, by all concerned, was made in pursuance of an authority given by some person competent to give away the son in adoption. 7 B. H.C R. App. XXXIII at p. XXXIV Dist. The adoption of an orphan would be valid, if there was evidence to show that the adoptee's natural parents had given the boy away to a person who made the adoption years afterwards and even after the death of the natural father. 7 Mad. 548, Ref; 18 Mad. 145, Ref. (*White*, C.J. *and Benson*, J.) VAITHILINGA MUDALI *v.* MUNIGAN. **37 Mad. 529 = 23 M.L J. 189 = 18 I C 299 = (1912) M.W N. 1127.**

HINDU LAW—Adoption—Eligibility.

——*Adoption— Eligibility — Marriage—Sudras.*

An adoption of a Hindu Sudra after marriage is clearly invalid. (*White* C.J. *and Sankaran Nair*, J.) JANAKIRAM PILLAY *v.* VENKIAH CHETTY. **11 I.C. 783 = 10 M.L.T. 21.**

——*Adoption—Eligibility—Cousin of the same degree.*

There is nothing in the Hindu Law to prevent the adoption of a cousin standing in the same degree of relationship to the common ancestor as the person adopting. 3 M 15; 36 M. 353; 34 B. 491 ; 14 M. 459, Ref. (*Drake Brockman*, J.C.) GULAB THAKUR *v.* FADALI. **68 I.C. 566.**

——*Adoption—Eligibility for — Married man—Jains.*

Among Jains a married man can lawfully be adopted as adoption is a purely secular matter ; among them religious ceremonies not being essential. 29 All 495 ; 30 All. 197; 32 All. 247; Foll. (*Drake-Brockman*, J.C.) JAMUNABAI *v.* JUHARMAL. **56 I.C. 81.**

——*Adoption— Eligibility — Marriage — Sudras.*

The adoption of a married Sudra is invalid according to the Mitakshara as understood by the Benares School of Hindu Law. 35 All. 263. Foll. (*Prideaux*, A.J.C.) KRISHNA MALI, *v.* DEOLIA. **44 I.C. 978.**

——*Adoption—Eligibility—Wife's brother—Rules of prohibited degree.*

The Viruddha Sambandha rule is confined to the three cases of daughter's son, sister's son and mother's sister's son mentioned in para. 17 of Dattaka Mimamsa. Adoption of a wife's brother by Brahmins governed by Bombay School is valid in the absence of an established custom to contrary. (*Stanyan*, A.J.C.) PRALHAD *v* MAHADEO. **21 I.C. 266 = 9 N.L.R. 130.**

——*Adoption — Eligibility — Daughter's son—Kashmir Brahmins.*

According to a custom prevailing among Kashmir Brahmins it is permissible to adopt a daughter's son. (*Stuart and Kanhaiyalal*, A. J.Cs.) IKBAL NARAIN *v.* RAJENDRA NARAIN. **21 O.C. 276 = 48 I C. 767 = 5 O.L.J. 701.**

HINDU LAW—Adoption—Eligibility.

———*Adoption—Eligibility—Case.*

A primary caste must adopt from within its own limits. 21 All. 412 (P.C.), Rel. to; 30 Cal. 999, Dist. (*Stuart and Kanhaiya Lal*, A.J.Cs.) NARAIN SINGH *v.* SHI M KALI KUNWAR.
25 I.C. 45=17 O.C. 186.

———*Adoption—Eligibility—Kshatriya boy of 19.*

Among Kshatriyas a boy of the age of 19 whose *upanayanam* ceremony had not been performed at the time of his adoption could be validly adopted and notwithstanding the prohibition of the adoption of a boy over 5 years of age in the Dattaka Mimamsa. (*Miller*, C.J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI **2 Pat. 469= 4 Pat. L.T 427=1 Pat. L R. 291= 1923 Pat. 97=1923 P. 423.**

Adoption—Estoppel.

———*Adoption—Estoppel—Widow.*

Where a Hindu widow solemnly asserts her husband's authority to adopt a son and takes a boy in adoption, treats him as adopted son and brings up as such, she is subsequently estopped from denying her authority to adopt. The estoppel is however, personal to the widow. (*Lord Robson.*) DHARAM KUNWAR *v.* BALWANT SINGH. **34 All. 398=39 I A. 142= 16 C.W N. 675=9 A L J. 730= 14 Bom. L R. 485=(1912) M W.N. 64= 12 M.L.T. 95=16 C L J 60= 15 I.C. 673=23 M.L.J. 200 (P.C.).**

[On Appeal from 30 All. 549=5 A L J. 558= (1908) A.W.N. 231=4 M.L.T. 385.]

———*Adoption—Estoppel.*

A widow representing that she has authority to adopt and making an adoption cannot subsequently impeach the validity of the same. (*Richards*, C.J. *and Banerjee*, J.) GANGA PRASAD *v.* BUDA SEN. **11 I.C. 27.**

———*Adoption—Estoppel.*

A widow adopting an orphan boy is not estopped from asking for a declaration that the adoption is invalid. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRABHAGA. **34 I C. 675= 12 N.L.R. 100.**

Adoption—Evidence.

———*Adoption—Evidence of—Old adoption—Treatment.*

Where there is no direct evidence to prove that the widow of a person who died in 1822 had authority to adopt but the fact that for many years past the adopted person behaved as an adopted person and that he was treated as such by others including the ancestors of the plaintiffs, now denying the adoption, has been established, it must be inferred that the widow had authority to adopt and that the adoption was known and recognised in the family. (*Piggot and Walsh*, JJ.) PREM DEVI *v.* SHAMBHU NATH. **42 All. 382=76 I C. 600= 18 A.L.J. 474.**

HINDU LAW—Adoption—Evidence.

———*Adoption—Evidence of—Affidavit filed in interlocutory proceeding—Procedure—Question put by Judge to person present in Court—Answer not challenged—Comment.*

The question being whether A the deceased husband of the respondent, was adopted as a son by B, the deceased husband of the appellant, *held*, that the High Court was wrong in reversing the decision of the trial Court that an adoption had taken place. B's purohit on being examined as witness to prove that no adoption had taken place deposed that the obsequies of B were performed by his brother C and not by A, C, who was present in the Court when the purohit was being examined was asked by Judge if it was so and he answered in the affirmative. C had not been called as a witness, and no attempt was made on behalf of the respondent to challenge his statement or have him entered into the witness box for cross-examination. *Held*, that this furnished legitimate matters for comment to the trial Judge. (*Viscount Haldane*) GANNABHATTULA VENKAMMA *v.* GANNABHATULA VENKATARATHNAMMA. **23 C.W N. 961= (1919) M.W.N. 544=10 L W. 599— 27 M.L.T. 107 (P.C.).**

———*Adoption—Evidence of—Absence of deed of adoption or other written record—No entries in account books.*

When there is no deed of adoption, or other formal written record, when the ceremonies said to have taken place were of the briefest possible description and when the child's name was not changed and he was never taken to live with his new family or recognised by them in any way, it is highly improbable that the adoption took place. Having regard to the habits of the Indian people with regard to the keeping of the accounts regarding their most minute transactions, the absence of any reference to expenditure on the ceremony of adoption in the accounts either of the natural or of the adoptive father covers an alleged adoption with suspicion. 32 A.C. 104 (P.C.), Rel. (*Lord Parmoor*) DIVAKAR *v.* CHANDAN LAL. **44 Cal 201=18 Bom L.R 992= 23 C.L.J. 17=21 M L T. 6=5 L.W. 103= (1917) M.W N. 50=21 C.W.N. 314= 32 M.L J. 636=39 I.C. 6= 12 N.L.R. 164 (P.C.).**

———*Adoption—Evidence.*

Mere execution of a deed does not effect an adoption, and it has yet to be found in a Court of law that in a community where an orphan adoption is recognised as valid such an adoption could be made up by a deed alone. (*Macleod*, C.J. *and Crump*, J.) SHIDAPPA *v.* SANTAWAKOM. **1923 Bom. 302.**

———*Adoption—Evidence—Presumption as to factum.*

Where an adoption was never challenged for many years it would be a little difficult for the adoptee to establish exactly what occurred. *Held*,

therefore that the factum of adoption must be taken as proved and that it is a fair presumption to make that such adoption was made with the necessary assent of the collaterals (*Broadway*, J.) KANHAYA v. NAURANG. **1923 Lah 374.**

———*Adoption—Evidence—Registered deed—No continuous treatment as son—Subsequent repudiation.*

Where, after executing a registered deed of adoption, there was no evidence of continuous treatment as adopted son and the adopter consistently repudiated the adoption, the alleged adoption could not be said to be satisfactorily established. (*Shah Din and Agnew*, JJ.) GHULAM HAIDER *v.* GHULAM NABI.

312 P.L.R. 1913=21 I.C. 618=
227 P.W R. 1913.

———*Adoption—Evidence—Treatment.*

Existence of deed without subsequent treatment of adoptee as adopted son is not sufficient to prove adoption especially when there is motive for making a pretence of adoption. (*Johnstone and Chevis*, JJ.) BURA *v.* NARAIN SINGH. **63 P.W.R. 1911=9 I C. 668=**
82 P L.R. 1911.

———*Adoption—Evidence—Authority acted upon after long time—Effect.*

Courts will be justified in viewing with care an adoption which purports to be based on an authority given many years before the event. (*Wallis*, C.J. *and Seshagiri Iyer*, J.) ADUSAM ALLI KRISNAYYA *v.* ADUSAMALLI LAKSHIMI PATHI. **30 M.L.J. 265=32 I.C. 253=**
19 M.L T 286

[Affirmed on appeal 56 I C 391=
43 Mad. 630 (P.C.)]

———*Adoption—Evidence of—Recitals in deeds—Evidence Act, S. 50.*

When an adoption alleged to have taken place 40 years ago has to be proved, the adopted son being dead, evidence of the enjoyment of properties of the adoptive father by the adopted son and acquiescence of persons who but for the adoption would have been entitled to the property is admissible to prove adoption under S. 50 of the Evidence Act. (*Wallis*, J.) MULLANGI VENKATARANGAM CHETTY *v.* VENKATASUBBAMMAL. **13 M L T 515=**
19 I C 740=25 M.L J 373

———*Adoption—Evidence—Delay in adopting—Presumption as to factum of authority.*

Delay in adopting by a widow duly authorised only proves unwillingness on the part of widow to divest herself of the estate till actual necessity arose, but does not raise a presumption against the factum of authority or that the adoption was not properly made. (*Benson and Sundara Aiyar*, JJ.) KAMALAPUDI SUBBIAH *v.* IMMADISETTI SAKKAYA.

10 M L.T 553=11 I C. 334=
(1911) 1 M.W N. 350.

———*Adoption—Evidence.*

Where the name of the boy alleged to have been adopted, was not changed and where no

proof was produced to prove the expenditure of the adoption ceremony, though the alleged adoptive father kept regular accounts, and where no reference was made to the adoption at the time of mutation, when widow's name was substituted for that of her husband. *Held*; the adoption was not proved. 12 N.L.R. 164, followed (*Kotval and Prideaux*, A. J. C. DEORAO v. MT. ANNAPURNABAI.

1922 Nag 185.

Adoption—Factum Valet.

———*Adoption*—Factum valet.

The doctrine of *factum valet* only applies to adoptions where matters which do not affect the essence of the adoption have been disregarded. The adoption of an orphan cannot be validated by the application of this principle. (*Prideaux and Macnair*, A. J. Cs.) SONIBAI *v.* DHANRAJ. **56 I.C. 620.**

[Also 16 I.C. 180=36 Bom. 533]
[Also 39 M.L.J. 495=12 L.W. 613=
(1920) M.W.N. 708.]

Adoption—Invalid Adoption.

———*Adoption — Invalid adoption —Position of adopted son.*

A person whose adoption is invalid, is in the eye of law an absolute stranger to the adoptive family. (*Sir Samuel Griffith*). RAMKISOR KEDARNATH *v.* JAYANARAYAN RAMRACHAPAL. **40 Cal 966=40 I. A. 213=**
(1913) M. W. N. 661=14 M. L. T. 163=
17 C. W. N. 1189=18 C. L. J. 237=
15 Bom. L.R.867=11 A.L.J. 865=
25 M L J. 512=20 I.C. 958=
10 N.L.R 1 (P.C.).

———*Adoption—Invalid adoption—Maintenance.*

A boy whose adoption is found to be invalid has no right to be maintained out of the estate of the adoptive family. The mere fact that ceremonies were properly performed and that the widow thought that she had authority to adopt would not affect the question. 12 B.H.C. R. 364 (397); 1 M.H.C.R. 363; 1 M H.C.R. 45. Ref. (*Heaton and Shah*, JJ.) DALPATSINGJI *v.* RAISINGJI NAHARSINGJI

39 Bom. 528=29 I C 913=
17 Bom. L R 563.

———*Adoption — Invalid adoption—Performance of* Upanayanam*—When a bar.*

An *Upanayanam* is not valid unless performed by the father or in his absence, by another kinsman in the family to which the boy concerned actually belongs. The performance of the *Upanayanam* in a family into which the boy is wrongly believed to have entered by an invalid adoption, is a nullity and is no bar to his subsequent adoption. (*Oldfield and Phillips*, JJ.) VADREU RANGANAYAKAMMA *v.* SOMASUNDARA RAO. **69 I C 603=**
43 Mad. 876.

———*Adoption—Invalid adoption—Ratification of void adoption.*

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A void adoption cannot be ratified. Ratification in relation to adoption means confirmation of an imperfect obligation, by the person legally bound by it. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATI RAJU *v* PATAMSETTI VENKATASWAMI. **40 Mad 925 = 32 M.L.J. 119 = 40 I.C 518 = 5 L.W. 603.**

———*Adoption—Invalid adoption — Rights of invalidly adopted son.*

An invalid adoption does not under Hindu Law, *per se* destroy the adoptee's rights in his natural family. 1 M.H.C.R. 363 ; 12 B.H. C.R. 364, 397, Ref. (*White*, C.J. *and Benson*, J.) VAITHILINGA MUDALI *v.* MUNIGAN.

37 Mad. 529 = 23 M.L J. 189 = 15 I.C. 299 = (1912) M W.N. 1127.

———*Adoption—Invalid adoption—Effect of —Possession of property.*

A person can acquire property by long possession as adopted son of another under an invalid adoption but it cannot give him the status of an adopted son or put an end to his position as a member of his natural family. (*Benson and Sundara Aiyar*, JJ.) AIYANNA CHARIAR *v.* LAKSHMI AMMAL. **21 M.L.J. 500 = 10 M.L T 19 = 10 I C. 194 = (1911) 2 M.W.N 62.**

———*Adoption—Invalid adoption—Supply of ornaments to parents.*

The supply of clothes or ornaments to the parents of the boy to be adopted or the payment of money therefor in anticipation of the adoption cannot invalidate the adoption or be taken to indicate that it was made from sinful or imporper motives (*Stuart and Kanhaiya Lal*, A.J.Cs.) TRIBHUVANNATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD.

47 I C. 225 = 5 O L J. 295.

———*Adoption—Invalid adoption—Giving and taking—Motives of adopter—Relevancy of.*

A mother can give her son in adoption even without her husband's express consent where such consent cannot be obtained as where he is dead or has joined a religious order. The fact that the person adopting had mixed motives for the adoption could not be sufficient in law to render the adoption invalid. Where the adopter has a right to adopt, the fact that there were motives of a worldly nature which induced him to adopt would not vitiate the adoption especially were the rights of other persons are not infringed. (*Miller*, C J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI.

2 Pat. 469 = 4 Pat L.T. 427 = 1 Pat. L.R. 201 = 1923 Pat 97 = 1923 P. 423

Adoption—Rights of Adopted Son.

———*Adoption—Rights of adopted son—Sudras of Madras Presidency—Adopted son and afterborn son—Shares.*

In the Madras Presidency among Sudras, an adopted son shares, on partition equally with an after-born son. The rule to the above effect in *Dattaka Chandrika* has been accepted in the presidency for more than a century and is not inconsistent with the Smritis or Mitakshara. 40 M. 632, overruled. (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **44 Mad 686 = 48 I.A. 280 = 19 A L J 621 = 41 M L J 33 = 34 C L.J 56 = (1921) M W N. 510 = 3 U.P.L.R. (P.C.) 46 = 23 Bom L R 920 = 14 L W. 270 = 61 I.C. 690 = 26 C.W.N. 1 (P.C.).**

HINDU LAW—Adoption—Rights of adopted son.

———*Adoption—Rights of adopted son—Extent of.*

The rights of an adopted son, unless curtailed by express texts, are in every respect the same as those of a natural born son ; and an adoption, so far as the continuity of the line of inheritance is concerned, has a retrospective effect. (*Mr. Ameer Ali.*) PARTAP SINGH SHIR SINGH *v.* AJAR SINGH RAISINGJI. **36 M.L J 511 = 17 A.L.J. 522 = 21 Bom. L.R 496 = 1 U P L R. (P.C.) 39 = (1919) M.W N. 318 = 10 L W. 339 = 50 I. C. 457 = 24 C.W.N 51 (P.C.).**

[On appeal from 28 I C 529 = 17 Bom. L.R. 273]

———*Adoption—Rights of adopted son—Authority to adopt limiting his rights—Dayabagha.*

Under the Dayabagha law a testator has power to attach to an authority to his widow to adopt, a condition that her estate should not be interfered with or divested during her life just as he can postpone the succession of his natural born son by interposing life estate. (*Mr. Ameer Ali*). BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY

43 Cal. 432 = 43 I.A. 12 = 19 M L T. 97 = 20 C W N. 169 = 30 M.L.J. 110 = 23 C.L J. 169 — 14 A.L.J. 167 = 3 L.W. 252 = (1916) 1 M.W N. 73 = 31 I.C. 812 = 98 Bom L.R. 847 (P C.).

[Affirming 41 Cal. 642 = 24 I.C. 453 = 18 C.W N 380.]

———*Adoption—Rights of adopted son—Same as those of natural son—Rule—Exception—Partition.*

According to the Hindu Law an adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances which are accurately defined by the Dattakka Mimamsa and Dattaka Chandrika. These instances relate to marriage and to competition between an adopted son and a legitimate son subsequently born to the adoptive father. 4 Cal. 425, disappr; 9 W. R. 423; 8 C. L. R. 57, appr ; 8 Cal. 302 and 10 Cal. 232, Ref.; where of two brothers B and H who were members of a joint Hindu family, B left a widow who adopted plff. as B's son and H left the defendant his natural born son. *Held*, on a partition, the adopted son (plaintiff) was entitled to an equal share of the joint family

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property with the defendant. (*Sir John Edge*). NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSOND S 40 Bom 270=43 I.A.56= 20 M L J 143=14 A L J. 185= 3 L W. 253=19 M L.T. 193= 18 Bom. L.R 172=(1916) 1 M W.N. 253= 23 C L J 395=32 I C. 403= 20 C.W N. 702 (P.C)

———*Adoption — Rights of adopted son— Natural family.*

Adoptee is not a lineal descendant of his natural father and cannot succeed to the occupancy holding of his brother by natural father. (*Richards*. C J. *and Tudball*, J.) THAMMAN SINGH *v.* DAL SINGH. 37 All 7= 27 I.C. 85=12 A.L.J. 123.

———*Adoption— Rights of adopted son— Succession to stridhanam.*

Adopted son succeeds to stridhanam of his adoptive mother in preference to husband's collaterals. (*Richards*. C. J *and Banerjee*. J.) GANGA PRASAD *v.* BUDH SEN. 11 I C. 27.

———*Adoption—Rights of adopted son— Alienations by widow – Effect on.*

As soon as a person is adopted, all the alienations of the estate made by the widow would become ineffective against him unless it could be shown that they were made for necessity. (*Macleod*, C. J. *and Crump*. J.) GANPATI SHANKRAPPARI *v.* KSHNAPPA. 1924 Bom. 159.

———*Adoption—Rights of adopted son— Succession to maternal grandfather's property in natural family.*

A person who is adopted into another family cannot succeed to the property of his maternal grandfather in his natural family. 43 I. A. 56, 68; 10 I. A. 138, Ref. (*Macleod*, C.J. *and Crump*. J.) BHAUSAHEB SHIDGAUDA *v.* RAMGAUDA ANNAGAUDA. 25 Bom. L R. 813= 1923 Bom. 471.

———*Adoption—Rights of adopted son—Property obtained on partition in natural family.*

Where a person governed by the Mitakshara Law, as obtained at a family partition with his father his share of the ancestral property and he is subsequently adopted in another family he is not thereby divested of the property which vested in him on partition, 29 M. 437, Foll.; 40 B. 429, Dist. (*Macleod*, C J. *and Crump*, J.) MAHABLESHWAR *v.* SUBRAMANYA. 47 Bom, 542=25 Bom. L R. 274= 1923 Bom. 297.

———*Adoption—Rights of adopted son— Succession.*

An adopted son takes completely the place of a natural son, and is competent to inherit the property of his adoptive mother's ancestors. (*Macleod*. C.J *and Shah*. J.) DATTATRAYA *v.* GHANGABAI. 46 Bom. 541=24 Bom L R. 69= 1922 Bom. 321.

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———*Adoption—Rights of adopted son— Execution of decree of natural father.*

A decree permitted the decree-holder to open a new door in a wall of his house. The decree-holder died afterwards leaving him surviving a son who was given in adoption in another family and a daughter's son. The decree-holder's son applied to execute the decree. The applicant who was the son of a deceased decree-holder since adopted into another family could not by virtue of his adoption, be treated as non-existent in the family of his natural father for the purposes of execution of his decree, and the nearest heir of the decree-holder was the daughter's son. (*Scott*, C.J. *and Hayward*, J.) RAMCHANDRA *v* MANU BAI. 43 Bom. 774=52 I C. 695= 21 Bom. L.R. 776.

———*Adoption—Rights of adopted son— Provision for maintenance of adoptive mother— Gift of charity.*

An agreement entered into at the time of adoption between the natural father and adoptive father for a reasonable provision for the maintenance of the widow of the adopter is valid under the general custom modifying the strict Hindu Law. But this exception should not be extended so as to include gifts to temples, etc. The grant would be invalid and not binding on the adopted son. 16 Mad. 400: 2 M. 91; 16 Cal. 556; 27 Mad. 577; 19 Bom. 428; 40 Bom. 668, Foll. (*Heaton and Hayward*, JJ.) BALKRISHNA MOTIRAM GUJAR *v.* SHRI UTTAR NARAYAN DEV. 43 Bom. 542= 50 I.C. 912=21 Bom. L.R. 225.

———*Adoption — Rights of adopted son—Son born to adopted son after adoption, position of.*

A son, in the mother's womb at the time of the father's adoption, is born into his father's adoptive family and not into his father's natural family. (*Beaman and Heaton*, JJ.) ADVIFAKIRAPPA *v.* FAKIRAPPA ADIVEPPA. 42 Bom. 547=46 I.C. 644= 20 Bom. L.R. 703.

———*Adoption—Rights of adopted son— Marriage.*

There is an entire cessation of connection with the natural father's family, and marriage within the prohibited degrees of relationship in the natural family is prohibited. *Quaere*:— Whether the disabilities arising from natural relationship are confined to marriage. 41 Bom. 318, Ref. (*Batchelor and Shah*, JJ.) LAXMIPATIRAO SRINWAS *v.* VENKATESH TIRMAL. 41 Bom. 315=38. I.C. 552=19 Bom. L.R. 23.

———*Adoption—Rights of adopted son— Alienation— Setting aside.*

An adoption has not the effect of divesting estates vested before it was made. But the adopted son can question the validity of an alienation as and from the date of his adoption as an alienation will be valid only if it had been made for legal necessity. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBBAI. 41 Bom. 93=37 I.C. 945=18 Bom. L.R. 934.

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——— *Adoption—Rights of adopted son—Agreement—Binding nature of.*

Execution of a will contemporaneously with adoption makes it a family arrangement which is binding on the adopted son who cannot both approbate and reprobate the instrument. (*Batchelor and Shah*, JJ.) KASHI BAI RAMCHANDRA GHATGE *v.* TATYA GENU.

40 Bom. 668=36 I. C. 846=18 Bom. L.R. 740.

———*Adoption—Rights of adopted son—Natural family.*

The divesting of vested estates is by no means an uncommon incident of adoption under certain circumstances and seems to be quite consistent with Hindu law. An adoption under the Mitakshara law has the effect of divesting the adopted son of all rights to the property of his natural father even though it had vested in him exclusively before adoption. (*Batchelor and Shah*, JJ.) DATTATRAYA *v.* GOVIND SAMBHAJI. **40 Bom. 429=34 I.C. 423=18 Bom. L.R. 258.**

———*Adoption—Rights of adopted son.*

A right of action is not necessarily the same as the acquisition of title to property. Whether the two rights coalesce in a given case depends on the circumstances. If an adoption is made by the owner of a property, the adopted son from the mere fact of adoption acquires no title to it. (*Scott*, C.J. *and Chandavarkar*, J.) SHRINIVAS *v.* BALWANT VENKATESH.

37 Bom. 513=20 I.C. 162=15 Bom. L.R. 533.

———*Adoption—Rights of adopted son—Effect of.*

An adopted minor son is not bound by an agreement between his natural father and the adoptive widow that the property would go to daughter of the widow on her attaining majority. He can repudiate it after attaining majority. (*Scott*, C.J. *and Chandavarkar*, J.) VYASACHARYA NARAYANACHARYA *v.* VENKUBAI RANGACHARYA UPADYA.

37 Bom. 251=17 I.C. 741=14 Bom. L.R. 1109.

———*Adoption—Rights of adopted son—Step-mother—Co-wives of adopter.*

Where a man takes son in adoption after the death of his first wife the adopted son becomes a step brother of a daughter by the first wife. The adopted son becomes the full son of the wife joining in the adoption and the step son of the others. (*Walmsley and Huda*, JJ.) SRIMATI GUNAMANI DASSI *v.* DEVI PROSANNA ROY. **54 I.C. 897=23 C.W.N. 1038.**

———*Adoption—Rights of adopted son—Agreement by natural father restricting rights.*

An anti adoption agreement by the adoptive mother with the natural father of the adopted son is valid and binding on the adopted son if it amounts to a fair and reasonable arrangement for the enjoyment of her husband's property. But neither the adoptive mother nor the natural father has any right to impose a personal contract on the minor adoptee. Such an agreement does not bind the minor. (*Chatterjee and Walmsley*, JJ.) PANCHANON MAJUMDAR *v.* BINOY KRISHNA BANERJEE.

44 I.C. 538=27 C.L.J. 274.

———*Adoption—Rights of adopted son—Widow Family arrangement—Agreement for maintenance.*

Disputes having arisen between the nephew and widow of the deceased, regarding the latter's maintenance, agreements were entered into between the parties on the footing that on the death of the widow the deft. would be entitled to the estate of the deceased and the deft. in pursuance of the agreements deposited a sum for the maintenance of the widow. Thereafter the plff. was adopted by the widow. *Held*, that agreements entered into by the widow only with reference to her maintenance could not be set up as deeds of family arrangement between the members of the family then in existence as barring the rights of the adopted son. (*Fletcher and Huda*, JJ.) MATHURA DAS KARNAM *v.* SRIKISSEN KARNAM. **44 I.C. 5=27 C.L.J. 517.**

———*Adoption—Rights of adopted son—Adopted son's right with natural after born son.*

An adopted son of a Sudra shares equally with the after born natural son in the ancestral secular and debutter properties. An *ekrar* by an adoptive father at the adoption that the adopted and natural son if born afterwards shall share equally in all properties is valid and binds the heirs and legal representatives. (*Chaudhuri and Newbould*, JJ.) ASITA MOHAN GHOSE *v.* NERODE MOHAN GHOSE.

35 I.C. 127=20 C.W.N. 901.

———*Adoption—Rights of adopted son—Succession.*

Under the Hindu Law the rights of an adopted son unless curtailed by express texts are in every respect similar to those of a natural son in the matter of succession. The text of Vasistha which says that if after an adoption a legitimate son be born, then the adopted son obtains a fourth share, should not be extended to cases not comprised strictly within its letter and spirit, *i.e.*, to cases of collateral succession. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) GANGADHAR BOGLA *v.* HIRA LAL BOGLA **43 Cal. 944=20 C.W.N. 489=34 I.C. 10=23 C.L.J. 372.**

———*Adoption—Rights of adopted son—Son's share.*

The share of an adopted son is the share of his adoptive father. If the adoptive father was himself an adopted son, the share would on a partition with natural born uncles be only a half share if the adoptive father was the natural brother of those uncles. The rule is not

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applicable to Sudras. (*Tottenham and Norris*, JJ.) PARAMANUND *v.* KRIRHNA CHARAN.
12 I.C. 6 = 14 C.L.J. 183.

———*Adoption—Rights of adopted son—Mitakshara Law.*

Where the adoption is not in the Dattaka form, he cannot, under Mitakshara, succeed collaterally in the adoptive father's family. (*Broadway and Abdul Raoof*, JJ.) TIRATH RAM *v.* KAHAN DEVI. **1 Lah. 588 = 60 I.C. 101 = 3 Lah. L.J. 35.**

———*Adoption—Rights of adopted son—Natural son.*

An adopted son takes one-fourth of the entire estate in the presence of a natural son. By adoption the adoptee becomes a co-parcener with the adopter who could not thereafter dispose of any property belonging to the joint family. (*Shadi Lal*, C. J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARANDAS.
2 Lah. 69 = 21 P.L.R. 1921 = 59 I.C. 286 = 15 P.W.R. 1921.

———*Adoption — Rights of adopted son—Agreement curtailing rights of the son.*

An agreement between the natural and adoptive parents of the boy that his right to the property of the adopter will begin on the death of the adopting mother is perfectly valid. (*Scott-Smith*, J.) SHANTI PARSAD *v* DHAN DEVI. **50 I C 113 = 42 P.W.R. 1919.**

———*Adoption—Rights of adopted son—Kritrima son.*

Only when an adoption is in *Dattaka* form that adopted son has the right of collateral succession. In case of *Kritrima* adoption an adopted son succeeds to the estate of adoptive father only as the relationship is a personal one. (*Shah Din*. J.) JIWAN MAL *v* JAMNADAS. **67 P.L.R. 1911 = 10 I.C. 822 = 232 P.W.R. 1911.**

———*Adoption—Rights of adopted son.*

Unless there is a custom to the contrary a person by whom it is alleged that the suit property was inherited by his father from his adoptive father cannot claim a share in the property left by the natural father of his father and his possession of it is adverse as against the collaterals of his father's real father. (*Shah Din and Chevis*, JJ.) LOK NATH *v* AMAR NATH. **24 P.L.R. 1911 = 9 I.C. 841 = 129 P.W.R. 1911.**

———*Adoption—Rights of adopted son—Bequest as to charity—Dispute as to.*

Where a Hindu testator being the sole owner of certain properties made a will giving authority to his wife to adopt a son and also making certain dispositions of his property to charity, the son adopted under the authority cannot dispute the bequest under the charity. 21 M. 11 ; 43 B. 542 ; 12 L.W. 17 ; 12 M 400, Ref.

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(*Spencer and Devadoss*, JJ.) SRI GADICHERLA VENKATA NARASIMHA RAO GARU *v.* NAYAPATHY SUBBA RAO. **46 Mad. 300 = 17 L.W. 31 = 32 M L T (H.C.) 47 = (1923) M W N. 111 = 1923 Mad. 376.**

———*Adoption—Rights of adopted son—Disposition by husband's will—Provisions of will intended to take effect after adoption.*

A Hindu testator provided by his will that his senior widow should adopt a boy after his death and that if after such adoption disagreement should arise between his junior widow on the one side and the senior widow and adopted son on the other side, the junior widow should be given 15 acres absolutely. Both the adoption and the disagreement took place accordingly. *Held*, in a suit by the junior widow for the recovery of the 15 acres ; in the absence of any agreement with the natural father at the time of adoption that it was to be subject to a liability to give 15 acres to the junior widow the latter was not entitled to recover, 27 Mad. 597 dist., and her right to sue for maintenance and residence however remained unaffected. A son adopted to a deceased Hindu, stands in the same position as if he was his posthumas son. 43 Bom. 778, Foll. A Hindu has no such power of alienation over ancestral properties as would affect the rights of his adopted son unless the alienation was made for necessity and an attempted alienation by will to take effect on a certain contingency expected to occur after an adopted son comes into existence subsequent to the death of the testator, and is therefore invalid. (*Sadasiva Iyer and Spencer*, JJ.) BHYRI APPAMMA *v.* BHYRI CHINNAMMI.
58 I.C. 511 = 12 L.W. 17.

———*Adoption—Rights of adopted son—Father and subsequently born aurasa son—Partition.*

On a partition between a father, his *aurasa* son and a son adopted, the adopted son is entitled to one-ninth share, the father and the *aurasa* son becoming each entitled to a four-ninths. On partition of patrimony *inter se* between the members of the joint family, the adopted son taking in such cases only a limited share. In collateral succession the share of the adopted son is as extended as that of a natural born son. 43 Cal. 944 ; 43 Bom. 778 ; 40 Bom 270, Dist. (*Seshagiri Iyer and Moore*, JJ.) VENKAMAMIDI BALAKRISHNAYYA *v.* VENKAMAMIDI VENKATA TRIAMBAKAM.
43 Mad. 398 = 38 M.L J. 86 = 27 M.L T. 142 = 11 L.W. 379 = 55 I.C. 371 = (1920) M.W.N. 272.

———*Adoption—Rights of adopted son—Alienation by widow can be impeached during lifetime of widow.*

A son adopted by a Hindu widow under her husband's authority can during her lifetime recover property alienated by her for no necessary purpose before the adoption was made.

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The adoption terminates her interest in the property which rests in the adopted son and alienation by her also ceases to have effect afterwards. 26 M. 143; 39 Mad. 1035, Overruled; 32 Cal. 669; 33 Bom. 88, Rel. (*Wallis*, C J. *and Oldfield and Kumaraswami Sastri*, JJ.) VAIDYANATHA SASTRI *v.* SAVITRI AMMAL
41 Mad 75=33 M L J. 387=
(1917) M.W.N 633=22 M L T 275=
42 I.C. 245=6 L.W. 542 (F.B.).
[Also 1 I.C. 647=33 Bom. 88.]

———*Adoption — Rights of adopted son— Competition with natural son.*

Adopted son takes one-foruth share of subsequently born natural son among Sudras. (*Sadasiva Ayiar and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA. 38 I.C. 244.

———*Adoption—Rights of adopted son— Affiliation—Gift to affiliated son.*

A gift to an affiliated son is valid and is not affected by any subsequent adoption by the affiliator's widow. (1914) M.W.N. 1919, Ref. (*Ayling and Hannay*, JJ.) CHALLA NARHI REDDI *v.* VUDUMULA VIAREDDI.
25 I.C. 893—(1914) M.W.N 919.

———*Adoption—Rights of adopted son—Postponement of vesting of estate—Validity of.*

Where a person is adopted a condition postponing the vesting of the estate in the adopted son beyond two lives in existence is valid. (*Hallifax*, A.J.C.) KOLHI *v* MT. CHOTTIBAI.
1923 Nag. 121 (1).

———*—Adoption—Rights of adopted son— Divesting of estate—Estate already vested.*

Where a person before his adoption had inherited his father's property in the natural family, or had obainted a portion of the estate on partition his rights in the property of his natural family which had vested in him are not divested by his subsequent adoption into another family. (*Dhobley*, A.J.C). MARALI *v.* LAXAMAN. 5 N.L J. 53=1922 Nag. 16.

———*—Adoption—Rights of adopted son— Benefit to mother.*

An agreement conferring a benefit on the adoptive mother, to be valid, must be a fair and reasonable one. 27 Mad. 577, Foll. (*Mittra*, A.J.C.) CHANDRABHAGABOI *v.* RAMCHAND.
46 I.C. 850.

———*Adoption—Rights of adopted son— Partition limited.*

An ante adoption agreement prohibiting partition during lifetime of adoptive father is binding on adopted son; since it only limits the son's enjoyment and does not deprive him of any right in the property. (*Batten*, A.J C.) KORAT *v.* PANCHAM. 33 I.C. 780=
12 N.L.R. 29.

———*—Adoption—Rights of adopted son.*

Under the Hindu law an adoption made by a widow dates back to the death of the adoptive father, 31 M. 75; 21 B. 319, Foll. (*Daniels and Lyle*, A.J.Cs.) KUAR NAGESHAR SAHAI *v.* KUAR MATA PRASAD. 25 O C. 189=
9 O.L.J. 235=1922 Oudh 236.

HINDU LAW—Adoption—Rights of adopted son.

———*Adoption—Rights of adopted son— Authority to junior wife subject to life-estate—Validity of adoption.*

The junior widow of the talukdar adopted a son in pursuance of a will made by the Talukdar, whereby he bestowed a life-estate upon her and gave her the power to adopt a son and further directed that the adopted son would take possession of the taluk only after her death under S. 22, Cl. 8 of the Oudh Estates Act. *Held*, that the adoption was good, as it effectuated the intention of the talukdar as expressed in his will and the taluk could not lose the character of impartiability in the hands of the adopted son. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LALA TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD.
47 I.C. 225=5 O.L.J. 294.

———*—Adoption—Rights of adopted son— Mutation of names.*

An adopted son can claim mutation of his name in respect of the property of his adoptive father's uncle whether the property be talukdari or non-talukdari. In Hindu Law an adopted son takes exactly the same position as a natural son. (*Holmes*, S.M. *and Campbell*, J. M.) NAGESHAR SAHAI *v* MATA PERSHAD.
34 I.C. 496=3 O.L.J. 178.

———*Adoption—Rights of adopted son—Relationship.*

The adopted boy takes the position of a natural son with regard to adoptive father but not with regard to wife of adoptive father who has not consented. (*Stuart*, A. J. C.) NARAIN DAT *v.* GOPAL DAS. 33 I.C. 361=
18 O.C. 341.

———*Adoption—Rights of adopted son— Agreement between natural parent of adopted son and adoptive mother—Validity.*

Held, Per *Coutts*, J.—Contracts entered into by the natural father of a minor are binding on a minor provided they have been properly entered into and are for his benefit. The agreement reserving a life estate to the adopting widow being one which at the time it was entered into was fair and reasonable was binding on the adoptee unless it was contrary to Hindu Law. Such agreements have been held to be binding. 11 Bom. 391; 38 Bom 227; 27 Mad. 577. Foll.; 16 Cal. 556 (P.C.), Dist. The construction of the will of the last owner being doubtful, it was construed by competent legal authority as giving a life-interest to his widow and this interpretation having been accepted as a condition of the adoption and incorporated into the agreement. It was not open to the plff. to contend that the construction was wrong. He cannot be allowed to approbate that part of the agreement which construes the will in his favour as giving the power to adopt him in the

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form he was adopted and reprobate that portion which construes the will as giving the Rani a life-interest. Per *Roe*, J.:—In view of the doubt as to the true interpretation of the will, the agreement would be binding on the parties as a family arrangement. (*Roe and Coutts*, JJ.) RANI KESHOBATI KUNWARI *v.* KUNWAR SATYA NARAYAN SINGH.
5 Pat. L.W. 167=47 I C. 53=
(1918) Pat. 294.

———*Adoption—Rights of adopted son—Agreement between adopted son and adoptive mother—Validity.*

An agreement by the adopted son an adult at the time of the adoption giving an absolute power over the property to the adopting mother till her death, is binding upon the adopted son and is not valid. (*Fawcett*, J. C.) GOVERDHANDAS CHELLARAM *v.* LALOOMAL.
53 I.C. 546=13 S.L.R. 155.

Adoption—Setting aside.

———*Adoption—Setting aside—Revocation not permissible.*

If an adoption has once taken place, the adoptive father cannot subsequently revoke it. (*Lord Parmoor.*) DIWAKAR *v.* CHANDAN LAL.
44 Cal. 201=18 Bom. L R. 992=
23 C.L.J 17=21 M.L.T. 6=
5 L.W.103=(1917) M.W.N. 50=
21 C.W N. 314=32 M L J. 636=
39 I C. 6=12 N.L.R. 164 (P.C.).

——— *Adoption — Setting aside — Remote reversioner.*

Where there is a nearer reversioner entitled to sue, it is in the discretion of the Court to grant a declaration as to the validity of an adoption at the instance of a remote reversioner. (*Richardson and Huda*, JJ.) MATHURA DEBYA *v.* BEJOY SINGH. 62 I.C. 627.

———*Adoption—Setting aside.*

Where an adoption has once been complete it cannot be set aside or repudiated by the adoptive father. (*Robertson and Beadon*, JJ.) SANT SINGH *v.* MULA. 23 P.L R.1913=
17 I.C. 350=44 P.R. 1913.

Adoption—Simultaneous adoptions.

———*Adoption—Simultaneous adoptions—Second adoption during lifetime of first adopted son.*

An adoption of second son during the lifetime of the first adopted son is invalid. The simultaneous adoption of two boys is also invalid. A person whose adoption is invalid remains in the family of the natural father. (*Johnstone and Rattigan*, JJ.) TEKCHAND *v.* GOPAL DEVI. 46 P.R. 1912=127 P L.R 1912=
13 I.C. 482=180 P.W.R. 1912.

Adoption—Texts.

See HINDU LAW—TEXTS.

HINDU LAW—Adoption—Widow—Consent of sapindas.

Adoption—Widow.

AUTHORITY OF HUSBAND.
CONSENT OF SAPINDAS.
CO-WIDOWS.
DAUGHTER-IN-LAW.
LIMITS OF HER POWER.
MAHRATTA SCHOOL.
MOTIVES.

Adoption—Widow—Authority of husband.

———*Adoption—Widow—Authority of husband—Custom—Entry in* Wajib-ul-arz.

An entry in the *wajib-ul arz* that the widows could adopt in a certain locality is the statement of a custom to the effect she could do so even in the absence of authority from her husband. (*Sir John Edge.*) BISHWANATH SINGH *v.* JUGAL KISHORE. 45 M.L J. 215=
18 L.W. 88=(1923) M.W.N. 620=26 O,C. 228=
38 C.L.J. 299=33 M.L.T. (P.C.) 289=
9 O & A L,R. 563=10 O.L J. 379=
50 I.A. 179=1923 P.C. 90 (P.C.).

———*Adoption—Widow—Authority of husband—*Sitambari Jains—*Ceremonies.*

Among *Sitambari Joins* the widow of a sonless jain can legally adopt to him a son without any express or implied authority from her deceased husband, and the adopted son may, at the time of adoption, be a grown up and married man. The only essential ceremony necessary is the giving and taking of the adopted son. (*Sir John Edge*). SHEOKUARBAI *v.* JEORAJ. (1920) M.W.N. 627=16 N.L.R. 170=
2 U.P.L.R. 161 (P.C.)=61 I C. 481=
25 C.W.N. 273 (P.C.).

———*Adoption—Widow—Authority of husband—Co-parcener's consent.*

Under the Hindu Law the widow of deceased co-parcener cannot adopt unless she has either the express authority of her husband or the consent of her husband's co-parceners. If she otherwise adopts such adopted son cannot claim to be entitled to the self-acquired property of his adoptive father. (*Macleod*, C.J. *and Fawcett*, J.) PANDU KRISHNA JADHAV *v.* DHONDI KRISHNA PATIL.
59 I C. 783=22 Bom. L.R. 1403.

Adoption—Widow—Consent of sapindas.

———*Adoption—Widow—Consent of sapindas—Rule—Exception—Dravida School—Duty to ask for consent.*

Under the Mitakshara Law as administered in the Dravida country a Hindu widow although not authorised by her husband to adopt a son to him, may nevertheless make such an adoption with the consent of his nearest *Sapindas*. The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. Save in exceptional cases, *e.g.*, minority and lunacy, the consent of the nearest *Sapindas* must be asked

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and if it is not asked it is no excuse to say they would certainly have refused ; but where a *Sapinda* is clearly proved to have withheld his consent from corrupt or malicious motives his dissent may be disregarded. In all other cases the absence of consent on the part of the nearest *Sapindas* cannot be made good by the authorisation of more distant relatives. But regard should be had to grave social objections, the rights of parties in actual possession. (*Viscount Cave,*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI

43 Mad. 650=18 A.L.J. 601=39 M.L.J. 70= 46 I.A 99=24 C.W.N. 905=28 M.L.T. 70= 56 I.C. 391=(1920) M.W.N. 385 (P.C.).

———*Adoption—Widow—Consent of* sapindas—*Whose consent necessary — Omission to ask for consent.*

Under the Dravidian custom, in the absence of authority from her deceased husband, a widow may adopt a son with the assent of all his male agnates. 12 M.I.A. 397, Foll.; 1 Mad. 174 ; 1 Mad. 69, Dist and Foll. In the case of an undivided family the consent must be obtained by a widow within that family. If the father-in-law is alive, from him : if not from the deceased husband's brother, the assent of separate and remote kinsmen is insufficient. The principle is the same if the husband dies separate from his kindred. In considering what assent is sufficient, rights of property cannot be disregarded : and the widow cannot be allowed to adopt on the assent of remoter relations when there are nearer one in existence. It is the duty of the widow to apply for the consent of all the nearest sapindas and it is not a good reason for her failure to so apply that the widow knew that the nearest sapindas if asked for their consent would have refused. (*Mr. Ameer Ali*) VEERA BASAVARAJU PANTULU *v.* BALASURYA PRASADA RAO

41 Mad. 998=25 M.L.T. 1=17 A.L.J. 84= 36 M.L.J. 40=23 C.W.N. 231= 29 C.L.J. 184=9 L.W. 243= 21 Bom. L.R. 238=1 U.P.L.R. (P.C.) 18= 43 I.C. 705=43 I.A. 265 P.C.).

[On appeal from 25 I.C. 3= (1914) M.W.N. 502]

———*Adoption—Widow—Consent of* sapindas—*Co-widows—Senior and junior widow.*

A junior widowed daughter-in-law can validly adopt with the consent of her father-in-law, when her husband while living was joint with his father. (*Shah and Crump, JJ.*) DNYANU PANDU *v.* TANU BALARAM,

44 Bom. 503=57 I.C. 113=22 Bom. L.R. 390

———*Adoption—Widow—Consent of Sapindas — Consent of next reversioner— Remoter reversioners bound.*

If the nearest reversioner of the adoptive father consents to an adoption, the remoter reversioners cannot object. 78 P.R. 1908 and 16 I.C. 463, Ref. (*Thonstone and Chevis, JJ.*) SOHAJ RAM *v.* RAM LAL. **78 P.L.R. 1914= 22 I.C. 542=69 P.W.R. 1914.**

HINDU LAW—Adoption—Widow—Consent of saplodas.

———*Adoption—Widow—Consent of sapindas—Corrupt consent—Person claiming through such sapinda—Estoppel.*

Where a Hindu widow succeeds as heir to her unmarried son who died at the age of 18, she is competent to adopt a son to her husband with the consent of his sapindas. The mere promise of payment for the consent of a sapinda does not vitiate the consent. There must be something more than a promise of payment to raise the plea of the invalidity of the consent on the ground that it was corruptly given. *Obiter* : Neither a sapinda who has given his consent for a bribe or through corruption nor any one claiming through such a sapinda, can set up the invalidity of the adoption on the ground that there was no proper consent. The maxim "*Nemo allegans furtitudinam suam est audiendus*" is one applicable to India. 32 M.L.J. 484 ; 31 Bom 405, Ref. (*Schwabe C.J. and Coutts Trotter J.*) PARTHASARATHI REDDY *v.* KANDASAMI REDDI. **45 M.L.J. 161= 18 L.W. 156=(1923) M.W.N. 423= 32 M.L.T. 349 (H.C.)=1923 Mad. 711.**

———*Adoption — Widow — Consent of sapindas.*

The right of the Court to scrutinise the kinsmen's reasons extends only where consent is refused and not where consent is given inasmuch as the law imposes a responsibility upon kinsmen in granting their consent to an adoption. A daughter's son is not entitled to be consulted regarding an adoption by a widow who has obtained the consent of the nearest sapindas, as he is not a *gnati*, and Bhinnagotra sapindas are not included under the term sapindas in the texts which require their consent to an adoption. Consent of the Sapindas to an adoption by the widow is material as guaranteeing the propriety of the widow's action in making the adoption. Where such consent has not been shown to have been obtained by fraud, coercion or corruption, it is sufficient authority for the adoption. (*Oldfield and Phillips, JJ.*) VADREU RANGANAYAKAMMAGARU *v.* RYALI SOMASUNDRA RAO.

59 I.C. 609=43 Mad. 876.

———*Adoption—Widow—Consent of* sapindas—*Subsequently given.*

The subsequent assent of the *sapindas* will not validate an adoption by a widow who had no such assent at the time of the adoption. (*Wallis, C.J. and Kumaraswami Sastri, J.*) DORAISAMI *v.* CHINNA GOUNDAN.

22 M.L.T. 538=(1918) M.W.N. 89= 34 M.L.J. 258=43 I.C. 560=7 L.W. 335.

———*Adoption—Widow—Consent of* sapindas—*Arbitrarily withdrawn—Subsequent adoption—Validity.*

Though a *sapinda* may after giving consent to an adoption by a widow review his opinion and revoke his consent before it is acted upon, yet such revocation if made without assigning any reasons and capriciously it is not valid. It

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is not competent for the Court to speculate as to the reasons which might possibly justify his conduct. 36 Mad. 145; 26 Mad. 627, Expl. A mother succeeding as heir to her first adopted son would be divested by a subsequently adopted son of the inherited property whether it is ancestral or self-acquired. 1 Mad, 174 (P.C.), Ref. (*Ayling and Seshagiri Iyer*, JJ.) SURYA NARAYANA *v.* RAMADOSS,

41 Mad. 604=34 M L.J. 87=
22 M.L.T. 501=7 L.W. 72=43 I C. 526=
(1918) M.W.N. 203.

———*Adoption—Widow—Consent of* sapindas—*Widow ignoring nearer* sapindas *on account of hostility—Adoption with consent of remoter* sapindas *whether valid.*

Assent o' the *sapindas* is necessary for adoption by widow in Madras. The assent is regarded as a substitute for authority of the husband and Hindu Law requires that such an assent should be obtained from those who would be the natural advisors and protectors of the widow, *prima facie* therefore it should be sought from those who are next in the line of succession. The widow can apply to more remote *sapindas* where there are one or two near *sapindas* who from improper motives withhold their consent, but she must consult the nearer ones before doing so even though they be inimical to her. She has no right to conclude on *a priori* reasoning that the consultation would be futile. (*Wallis, C.J. and Seshagiri Iyer, J.*) ADUSAMALLI KRISHNAYYA *v.* ADUSAMALLI LAKSHMIPATHI. 30 M.L.J. 265=
32 I.C. 253=19 M.L.T. 286.

[Affirmed on appeal 56 I.C 391=
43 Mad. 650 (P.C.)]

———*Adoption—Widow—Consent of* sapindas—*Representation by widow—Effect of.*

In the absence of anything to show that a reversioner consenting to an adoption was actuated by any representation of a widow that her husband had given her authority to adopt, a Court is entitled to presume that the reversioner, in giving his son to be adopted by the widow, was fully conscious of what he was doing and was mindful of all those considerations which he as a reversioner, ought to take into account. (*Wallis, C.J. and Tyabji, J.*) PANDA PATYYA *v.* PANDA VENKAMMA.
2 L.W. 455=29 I.C. 54=17 M.L.T. 393.

———*Adoption—Widow—Consent of sapindas—Undivided family—Consent of member—Long delay—Motive.*

The managing member of a Hindu family cannot be said to have acted improperly in declining to sanction an adoption made by the widow of a deceased member after long delay to enable her to alienate the property outside the family. In an undivided family the consent of the managing member alone might be sufficient to validate the adoption. (*Sankaran Nair and Oldfield, JJ.*) RAMA RAO *v.* NARASIMHA RAYA NIM VARU.
28 M.L.J. 363=28 I.C. 392=2 L.W. 286.

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———*Adoption—Widow—Consent of sapindas—Refusal—Grounds for.*

In giving or refusing consent to an adoption a sapinda is not entitled to proceed on grounds personal to himself but must act with deliberate consideration of what is for the benefit of the family. Where in answer to a request for his consent for adoption by a widow the next reversioner refused it on the ground that it would deprive him of his right to succeed to the property, *held*, that the consent was improperly refused. 27 M.L.J. 638; 26 Mad. 637, Rel. (*Wallis, C.J. and Hannay, J.*) VENKATAPATHI SOMAYAJULU *v.* PUNNAMMA.
17 M.L.T. 218=2 L.W. 284=28 I.C. 373=
(1915) M.W.N. 286.

———*Adoption—Widow—Consent of sapindas—Refusal on personal ground—Effect of—Adoption with consent of other sapindas.*

The consideration that should guide a sapinda in giving his consent to adoption by a widow is not personal loss but the benefit to the estate. An adoption therefore, made with the consent of remote sapindas when the nearer one refused a consent on the ground of his personal loss of inheritance, is perfectly valid. (*Sankaran Nair and Spencer, JJ.*) KALLEPALLI VENKATARAMA RAJU *v.* KALLEPALLI BAPAMMA. 39 Mad. 77=
(1914) M.W.N. 911=26 I.C. 888=
27 M.L.J. 638.

———*Adoption—Widow—Consent of* sapindas—*Refusal—Reasons.*

A Sapinda is not bound to state his reasons for refusing to give his consent to an adoption by the widow. (26 Mad. 627, Foll.) Where there are five grades of reversioners, the consent of two only of the third grade of sapindas both of whom are interested in making the adoption is not such a consent of the majority of *sapindas* as would amount to an authority to adopt. (*White, C.J. and Oldfield, J.*) KANDUKURI VEERA BASAVARAJU *v.* KANDAKURI BALASURIYA. 26 I.C. 3=(1914) M.W.N. 502.

[On appeal 48 I.C. 706=41 Mad. 998.]

———*Adoption—Widow—Consent of sapindas—Consent of remote reversioners—General consent.*

When nearest sapindas unreasonably withhold consent authority of remote sapindas is sufficient. (1914) M.W N. 620, Ref. An authority to adopt given to a widow by the sapindas of her husband is not legally invalid merely because it is expressed in general terms and an adoption in pursuance thereof is not invalid if made immediately and where all the sapindas are alive. 26 Mad. 631; 36 Mad. 145, Dist. (*Wallis and Sadasiva Aiyar, JJ.*) NAGARAMPALLI KANESAM *v.* NAGARAMPALLI BATCHAMMA. 1 L.W. 511=
24 I.C. 257=(1914) M.W.N. 620.

HINDU LAW—Adoption—Widow—Consent of sapindas.

———*Adoption—Widow—Consent of sapindas—Deceased sapinda.*

Adoption with consent of a deceased sapinda is ineffective if not approved by sapindas living at the date of adoption. A widow cannot act upon consent given by the sapinda but subsequently withdrawn. (*Benson and Abdur Rahim*, JJ.) MANI *v.* SUBBA RAYAR.

36 Mad. 145=19 I.C. 663=24 M.L.J. 484.

———*Adoption—Widow—Consent of sapindas—Consideration—Invalid.*

The receipt of consideration of Sapinda for giving consent to an adoption by a widow vitiates such consent. (*White and Phillips*, JJ.) DANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. **18 I.C. 989=36 Mad. 19.**

Adoption—Widow—Co-widows.

———*Adoption—Widow—Co-widows—Preferential right of senior widow.*

A junior widow adopting without senior widow's consent must have special authority from her husband. But a senior widow (*i.e.*) the widow that is married first, has a preferential right and can adopt without the husband's consent or that of his sapindas or of the junior widow in Bombay. (*Scott and Shah*, JJ.) BASAPPA *v.* SHRIDRAMAPPA. **43 Bom. 481=50 I.C. 736=21 Bom. L R. 217.**

———*Adoption—Widow—Co-widows—Preferential right.*

As between co-widows, it is the senior widow that has the preferential right to adopt and the junior widow is not entitled to adopt without the consent of the senior. Judgment of Stephen, J., in 12 I. C. 460, Appr. (*Jenkins*, C.J. *and Woodroffe*, J.) RAMJIT LAL KARMAKAR *v.* BEJOY KRISHNA KARMARKAR. **39 Cal. 582=18 I C. 17=16 C.W.N. 440.**

———*Adoption—Widow—Co-widows.*

In case of two Hindu widows, it is the senior who has the right to adopt and unless she refuses to exercise her power, a junior widow cannot adopt. When power to adopt was given in the following terms:—"Each of my two wives shall be at liberty to adopt three sons successively, that is one after another. *Held*, that simultaneous adoption was not sanctioned but the power was to be exercised according to the general law, and that the power was given to the two wives successively and that under the terms used, the junior widow was not entitled to adopt till the senior one had exhausted her right or refused to exercise it. (*Stephen*, J.) BIJOY KRISHNA KARMAKAR *v.* RANJIT LAL KARMAKAR. **12 I C. 460=38 C. 694.**

———*Adoption—Widow—Co-widows—Preferential right of senior widow—Sudras—Implied prohibition—Living away from husband—Adoption by junior widow.*

In the absence of any direction from the husband, the senior widow has under the Hindu Law the preferential right to adopt. **27 Cal. 351**; 39 Mad. 772; 2 L W. 24, Foll.; 5 Bom. H.C.R., 181; 48 Cal. 582, Ref. The above rule applies to Sudras also. The senior widow does not forfeit her preferential right to adopt, from the mere fact of her having lived apart from her husband, in the absence of any proof of adultery or misconduct on her part. The proper course for a junior widow would be to ask the senior widow to get the consent of the male *sapindas* to perform the adoption and to perform it herself and only if the senior widow was unwilling to perform it herself, it would be for the junior widow to ask her to agree to the adoption ceremony, being performad by herself. Per *Ramesam*, J.—From the mere fact that the husband and wife were living apart for a long time, a prohibition against the wife's right to adopt cannot be implied. 23 Bom. 789, Fol.; 8 Bom. 9, Dist. (*Spencer and Ramesam*, JJ.) MUTHUSAMI NAICKEN *v.* PULA VARATTAL **43 Mad. 266=42 M.L.J. 101=1922 M.W.N 63=30 M.L.T 60 (H.C.)=15 L.W. 40=1922 Mad. 106.**

HINDU LAW--Adoption--Widow—Daughter-in-law.

———*Adoption—Widow—Co-widows—Preferential right of senior widow—Adoption by junior widow without consent of the senior widow.*

Where a Hindu dies sonless leaving more than one widow, the preferential right to adopt (with the consent of the *sapindas*) vests with the senior among them and an adoption made by the junior widow without the consent of the senior widow though with the consent of the *sapindas*, is invalid. The co-widow is a *sapinda* whom the junior widow is bound to consult. 28 M.L.J. 72; 13 Bom. 160; 5 Bom. H.C.R.A. C.J. 181: 39 Cal. 582, Ref. (*Wallis* C.J. *and Coutts-Trotter*, J.) RAJA DAMRA KUMAR VENKATAPPA NARAYANIM VARU *v.* DAMRA RANGA RAO GARU. **39 Mad. 772=29 M.L.J. 18=18 M.L.T. 19=30 I C. 103=(1915) M W.N. 424.**

———*Adoption—Widow—Co-widows—Adoption by junior with consent of* sapindas.

Under the Mitakshara law an adoption made by junior widow of a deceased Hindu without the consent of the senior widow is invalid even though the adoption was made with the consent of the majority of the *sapindas* as the senior right has a preferential right to make an adpotion. 28 M. 315, Ref.; 13 B. 160; 39 C. 582, Foll. (*Sankara Nair and Spencer* JJ.) KAKERLA CHUKKAMMA *v.* KAKERLA PUNNAMMA. **(1915) M.W.N. 19=27 I.C 775=28 M L.J. 72=16 M.L.T. 612=2 L.W. 24.**

Adoption—Widow—Daughter-in law.

———*Adoption—Widow—Daughter-in-law—Power of—Vesting of estate—Divesting.*

Where the daughter-in-law succeeds as a Gotraja Sapinda of the last male owner in the absence of any nearer heir, she cannot adopt to

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her husband so as to affect the devolution of the estate inherited by her as a Gotraja Sapinda. (*Macleod*, C.J. *and Shah*, J.) DATTATRAYA *v.* GANGABAI **46 Bom. 541 = 24 Bom. L R. 69 = 1922 Bom. 321.**

———*Adoption —Widow—Daughter-in-law.*

In the case of an undivided family the junior widowed daughter-in-law can make a valid adoption with the consent of her father-in-law. (*Shah and Crump*, JJ.) DNYANU PANDU CHARAN *v.* TANU BALARAM CHARAN. **22 Bom. L.R. 390 = 51 I.C. 113 = 44 Bom. 508.**

———*Adoption—Widow — Daughter-in-law —Restrictions imposed by father-in-law.*

The power of a Hindu widow to adopt a son to her husband could not be controlled by the will of her father-in-law, deceased. If she adopts a son contrary to the terms of the will, the adopted son could not take as *persona designata* under the will, but he could take as the grandson of the testator under the adoption. (*Macleod*, C.J. *and Heaton*, J.) NATHWARLAL GIRDHARLAL *v.* RANCHGOR BHAGWANDA. **55 I C. 313 = 22 Bom. L R. 71.**

———*Adoption—Widow — Daughter-in-law —Consent—Will—Construction.*

There is no authority for holding that a father-in-law can authorise his daughter-in-law to adopt under the Hindu Law ; the only way in which a widow can adopt is either by the authority of her husband or by the consent of her nearest *sapindas* given *bona fide* and honestly. No *sapinda* is entitled to give by way of a will to take effect after his death, a consent to an adoption by a widow. The consent has to be given with reference to the circumstances attendant upon the proposed adoption and usually at the request of the widow. Consent to a future adoption cannot validate the adoption. 36 Mad. 145, Ref. (*Krishnan and Ramesam*, JJ.) TADEPALLI LAKSHMI NARASIMHAM *v.* RUKMANIAMMA **1923 Mad. 228.**

Adoption—Widow—Limits of her power.

———*Adoption —Widow—Limits of her power—Estate not vesting in widow—Effect of —Rights of adopted son—Jivai grant.*

Unless there is time limit imposed in the authority which empowers a Hindu widow to adopt or she is directed to adopt promptly, she may make the adoption so long as her power is not exhausted or extinguished. Her right to make an adoption is not dependent on her inheriting as a Hindu female owner, her husband's estate; she can exercise the power even though the property (a maintenance grant) reverts back to the line of the donor, on her husband's death without male issue. An adoption so far as the continuity of the line of inheritance is concerned has retrospective effect and the son adopted by the widow would take

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the properties of his deceased father just like a natural son. 10 M.I.A. 165; 1 Mad 69; 41 Mad. 855 ; 31 B. 373, Ref. to (*Mr. Ameer Ali*) PRATAB SINGH SHIR SINGH *v.* AGAR SINGHJI RAISINGJI, **43 Bom. 778 = 36 M.L J. 511 = 17 A.L.J. 522 = 21 Bom. L.R. 496 = I U.P.L.R. (P.C.) 39 = (1919) M W.N. 313 = 10 L.W. 339 = 50 I.C. 457 = 24 C W.N 87 (P.C.). [On appeal from 28 I.C. 529 = 17 Bom L.R. 273.]**

———*Adoption—Widow—Limits of her power.*

Quaere ;—Whether the widow of a co-parcener who died in 1853, could adopt a son in 1896 after the joint family property had vested in the widow of his brother's son. (*Mr. Ameer Ali,*) VEERABASAVARAJU PANTULU *v.* BALASURYA PRASADA RAO. **41 Mad. 998 = 23 M L T. 1 = 17 A.L.J 34 = 36 M.L.J. 40 = 28 C.W N 251 = 29 C L.J 184 = 9 L W. 243 = 21 Bom. L.R. 238 = 1 U P L R (P C.) 18 = 48 I.C. 706 = 43 I A. 265 (P.C.) [On appeal from 25 I C. 3 = (1914) M.W.N. 502.]**

———*Adoption —Widow—Limits of her power.*

Hindu Law recognises the validity of an authority given to a widow by her deceased husband to make successive adoptions on failure of the previous one. The power of the widow however comes to an end when the son first adopted has died after attaining full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son by his own widow. 26 Bom. 526. Appr. (*Viscount Haldane.*) SRI MADANA MOHANA DEO *v.* SIR PURUSOTTAMA ANANGA BHEEMA. **41 Mad. 855 = 35 M.L J. 138 = 5 P L W. 179 = 8 L.W 167 = 16 A L J 725 = (1918) M.W.N. 621 = 24 M L T. 231 = 28 C.L.J. 403 = 20 Bom, L R 1041 = 45 I.A 156 = 46 I C 481 = 23 C.W N. 177 (P.C.). [Affirming but on different grounds. 38 Mad. 1105 = 24 I C. 999 = 27 M L J. 306.]**

———*Adoption — Widow — Limits of her power.*

A widow can adopt even though there is no co-parcener capable of taking by survivorship. The theory that adoption should be to last male holder does not apply to a joint Hindu family. But when the sole surviving co-parcener dies and the estate vests in his widow, no other widow can adopt. (*Piggott and Walsh*, JJ.) LACHMI KUNWAR *v.* DURGAI KUNWAR. **40 All. 619 = 46 I.C 566 = 16 A L J. 646.**

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——*Adoption — Widow — Limits of her power.*

If it is established that events had occurred which could constitute an adoption, apart from any question of the competency of the person alleged to be adopted the widow cannot dispute such an adoption made by her husband. 1922 B. 397. Foll. (*Macleod*, C. J. *and Crump*, J.) SHIDAPPA *v* SANTAWAKOM.

1923 Bom. 302.

——*Adoption — Widow — Limits of her power—Extinction of joint family—Vesting of property in co-parcener's widow.*

The widow of a deceased co-parcener of a joint Hindu family cannot in the absence of specific authority make an adoption subsequent to the death of the co-parcener who survived her husband especially when the estate has vested in the widows of the surviving co-parcener. 44 B. 483; 26 B. 526; 48 I.A. 513; 14 B. 463, Ref. (*Shah*, A.C.J. *and Crump*, J.) SHIVBASAPPA *v.* NILANA. **24 Bom. L.R. 1162=47 B. 110=1923 Bom. 17.**

——*Adoption — Widow — Limits of her power—Not competent to impeach adoption made by husband.*

A widow is bound by the act of her husband in making an adoption and she must accept all the implications of an adoption by him, valid or invalid. 23 Bom. L.R. 1272, Foll. (*Macleod*, C.J. *and Coyajee*, J.) CHIMABAI MALGAUDA PATIL *v.* MALLAPPA PAYAPPA.

24 Bom. L.R. 489=1922 Bom. 397.

——*Adoption — Widow — Limits of her power—Widow inheriting as gotraja sapinda.*

In the Bombay Presidency a Hindu widow succeeding to an estate not her husband's but as a gotraja sapinda of the last male holder cannot make a valid adoption. The decision in 32 B. 499 is still good law and has not been affected by the decision in 48 I. A. 513. (*Macleod*, C.J. *and Shah*, J.) YEKNATH NARAYAN KULKARNI *v.* LAXMIBAI KESHO GOPAL.

24 Bom. L.R. 816=47 B 37=1922 Bom. 347.

——*Adoption — Widow — Limits of her power—Re-marriage—Capacity to give and take in adoption.*

A widow cannot, after re-marriage, give in adoption her son by first husband, especially when she adopts him to her second husband after his death as in such case, the person giving and taking in adoption would be the same individual. (*Macleod*, C.J., *Shah and Hayward*, JJ.) FAKIRAPPA VEERBHADRAPPA *v.* SAVITRAWA SENGAPPA.

62 I.C. 318=23 Bom. L.R. 482 (F.B.).

——*Adoption — Widow — Limits of her power—Widow consenting to adoption by widow or predeceased nephew cannot herself subsequently adopt.*

Where a Hindu widow consents to the adoption of a boy by the widow or a pre-deceased nephew of her husband her own power of adoption comes to an end, and she cannot subsequently adopt to her husband. (*Macleod*, C.J. *and Shah*, J.) VAMAN VITHAI KULKARNI *v.* VENKAJI KHANDO KULKARNI.

45 Bom. 829=61 I.C. 460=23 Bom. L.R. 269.

——*Adoption — Widow — Limits of her power.*

A Hindu died in union with his nephew who also died leaving him surviving a widow. Thereupon the former's widow adopted a son. *Held*, the adoption was invalid. The widow of a deceased co-parcener of a joint Hindu family cannot in the absence of any specific authority make the adoption subsequent to the death of a co-parcener who survived her husband; and more particularly when the latter surviving co-parcener has left a widow. (*Macleod*, C.J *and Heaton*, J.) THAKARANA TEJRANI *v.* SARUPCHAND. **44 Bom. 483=55 I.C. 964=22 Bom. L.R. 209.**

——*Adoption — Widow — Limits of her power — Son dying separate and issueless—Consent of sapindas.*

A Hindu died in union with his brothers leaving a widow and a minor son. The minor son became divided in interest from his uncles and then died unmarried. The widow next adopted. *Held*, that the widow was competent to make the adoption without the consent of her husband's brother. Per *Macleod*, C.J.:—The rights of reversioners are not vested so that her adoption of plff. was not derogatory of any vested right. That and the condition that the son's estate has not vested first in some other than herself are the only two conditions which stand in the way of the widow's right to adopt even if her husband died in union. (*Macleod*, C.J. *and Heaton*, J.) MALLAPPA BHARMAPPA *v.* HANMAPPA MARDEPPA.

44 Bom. 297=55 I.C. 814=22 Bom. L.R. 203.

——*Adoption — Widow — Limits of her power—Widowed daughter-in-law.*

It is competent to the widow of a predeceased son to make a valid adoption to her husband with the contemporaneous consent of her mother-in-law in whom the estate vests as heir of the last full owner. 23 Bom. 327, Foll. (*Heaton and Shah*, JJ.) SHIDAPPA BAPU BIRADKAR *v.* NINGANGAUDA SIDDAN GAUDA. **38 Bom. 724=27 I.C. 51=16 Bom. L.R. 663.**

——*Adoption — Widow — Limits of her power—Bombay Vatan Act* (V *of* 1886), *S.* 2.

An adoption by a widow having the effect of divesting the estate in a third person if made without that person's consent is invalid. This principle is applicable even if the mother adopt. after the death of her first son unmarrieds Where a Hindu widow first adopted a boy who died unmarried whereupon the property which was vatan vested in the nearest male reversioner, a second adoption by her is invalid and

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ineffective to divest the estate. 10 M.I.A. 279; 4 I.A. 1; 23 Bom. 347, Rel. (*Batchelor and Shah*, JJ.) BHIMABAI KRISHNAPPA DESAI *v.* TAYAPPA MURARRAO NADGAUDA.
37 Bom. 598=21 I.C. 107=15 Bom. L.R. 783
[This is no longer correct 50 I.C 457=43 Bom. 778 (P.C.).]

———*Adoption — Widow — Limits of her power—Object of adoption.*

The object of adoption among Hindus is not merely the due perpetuation of lineage but also to secure for the adoptive father and his ancestors the spiritual blessings which can only be conferred by a male heir. The spiritual purposes of a son are not exhausted in the person of a son who attains maturity but dies leaving a widow though without any issue. In Hindu Law the only express prohibition of adoption is in the case of a man who has either a son, grandson or great-grandson living. 5 Cal. 615; 10 Mad. 205; 17 Cal. 122; 8 Cal. 302; 32 Cal. 861; 33 Cal. 1306 and 41 Mad. 855 (P.C.), Ref. An adoption which would have the effect of divesting an estate which is already vested in a person other than the adopting mother is not permissible according to the cases. An adoption by a widow under an authority of her husband after the death of her natural son leaving a widow, but no issue is valid if thereby she divests no estate but her own. (*Teunon and Greaves*, JJ.) KUMUD BANDHU SAHA *v.* ROMESH CHANDRA SAHA.
46 Cal. 749=23 C.W.N. 358=49 I.C. 609=29 C.L.J. 214.

———*Adoption — Widow — Limits of her power—Original owner dying leaving behind him his widow and a son—Death of son after attaining 25 years of age—Power of adoption of the widow of the original owner, not at an end.*

Where a Hindu died leaving his widow and his son and the latter died after having attained his age of majority, but without leaving him surviving his widow, the power of adoption of the widow of the original owner is not exhausted and she can adopt a son to her deceased husband. Observations in 41 M. 855 (P.C.) considered as obiter and not binding. 35 M.L.J. 798 and observations of Sir John Wallis, C.J., in 25 M.L.T. 204, dissented from. The case-law on the subject reviewed and discussed. (*Schwabe*, C.J. *and Wallace*, J.) YADAVALLI TRIPURAMBA *v.* YADAVALLI VENKATARATNAM.
46 Mad. 423=41 M.L.J. 349=1923 Mad. 517.

———*Adoption—Widow—Limits of her power.*

The rule that an adoption by a widow must be made to the last male owner has no application to joint family property, which, for this purpose includes joint impartible Zemindari also. In such cases the limit imposed by law to the period within which the widow can

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exercise a power of adoption conferred on her is reached only where there has been a son natural or adopted to the person giving the authority and that son dies attaining full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son by his own widow. 41 Mad. 855, Foll. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) SRI JAGANNATHA GAJAPATI *v.* SRI KUNJA BIHARI DEO.
25 M.L.T. 204=(1919) M.W.N. 52=49 I.C. 929=9 L.W. 335.

———*Adoption—Widow — Limits of her power—Death of adopted son at age of four—Second adoption by widow—Validity—Rights of second adopted son.*

A member of a Hindu joint family dies leaving behind him his widow, his undivided brother and joint and separate property. In pursuance of authority given by him his widow adopted two boys in succession, the second after the death of the first at the age of four. *Held*, that the adoption was valid and that the second adopted son was entitled to a share in the joint property by partition and to his deceased father's separate property by inheritance. Per *Oldfield*, J.—The existence of a co-parcener otherwise competent to take by survivorship is no obstacle to the widow's exercise of the power of adoption recognised in 10 M.I.A. 279 and 41 Mad. 855 (P.C.). Per *Phillips*, J.—The theory that an adoption should be to the last male holder is not applicable to joint Hindu families living in co-parcenary. (*Oldfield and Phillips*, JJ.) VENKATARAMIER *v.* GOPALAN.
38 M.L.J. 698=24 M.L.T. 440=(1918) M.W.N. 719=49 I.C. 48=9 L.W. 43.

———*Adoption—Widow—Limits of her power.*

The doctrine of vesting and divesting of an estate by an adoption applies to separate as well as joint property. The rule that in order that an estate once vested may be divested, the adoption should be made to the last male holder, is inapplicable to co-parcenary properties. There is no limit of time within which a widow should make an adoption where a person is in existence who is competent to adopt a boy in whom the full proprietary title will vest, it must be taken to be the limit of the exercise of the power by the widow to make successive adoptions. Where the exercise of the power to make a second adoption will not result in creating a new line of succession but will only transfer the estate from one intermediate owner to another with the prospect of the latter even to be divested, the limits of the power must be taken to have been reached. (*White*, C.J. *and Seshagiri Aiyar*, J.) MADANA MOHANA *v.* PURUSHOTTAMA ANANGA.
38 Mad. 1105=27 M.L.J. 306=24 I.C. 999=16 M.L.T. 413.
[Affirmed on appeal 46 I.C. 481=41 Mad. 855 (P.C.)]

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——*Adoption—Widow—Limits of her power.*

An estate is divested by an adoption not made to last holder but to a prior male holder of the estate. At any rate such adoption is invalid without consent of person on whom estate is vested. 37 Bom. 598; 21 I.C. 107, Ref. (*White, C. J. and Phillips, J.*) CHINNACHAMI *v.* RAMASWAMY CHETTIAR. **10 M.L.T. 463= (1911) 2 M.W.N. 539=13 I.C. 7= 22 M.L.J. 85.**

[This view is no longer correct. *See* 46 I.C. 481=41 Mad. 855 (P.C.).]

——*Adoption—Widow—Limits to her power—Estate vested in surviving co-parcener.*

A Hindu widow who has not the family estate vested in her and whose husband was not separated at the time of the adoption is competent to make an adoption with her husband's authority and the consent of the senior surviving co-parcener. 41 Mad. 998 (P.C.), Foll. (*Mittra and Prideaux*, A.J.Cs.) RUSTAM RAO *v.* DINKARAO. **55 I.C. 38.**

——*Adoption—Widow—Limits of her power.*

There is no limit of time during which a Hindu widow may act upon the authority given to her to adopt a son to her deceased husband. Where, a Hindu son, whether natural or adopted, having inherited the property of his deceased father, dies leaving a son, or widow or any other person, as his heir other than the widow of his father, any power to adopt, held by his father's widow comes to an end; but this rule does not apply where the son dies leaving no heir other than his father's widow. (*Stanyon*, A.J.C.) NARAIN RAMA RAO *v.* DEBIDAS NARASINGH. **47 I.C. 41.**

Adoption—Widow—Mahratta School.

——*Adoption—Widow—Mahratta School.*

It is a general principle of Hindu Law as to adoptions that directions may be given by the husband orally or in writing, as for instance by a will, as to the way in which his widow should exercise a power of adoption to him and it is the duty of the widow to obey such directions. A direction to operate as a prohibition against a Hindu widow adopting a boy to her husband as a son except the boy named by him must be explicitly made and clearly intended by the husband to limit the discretion of his widow for all time, and on every occasion on which otherwise after his death, his widow might validly make an adoption to him. In the Mahratta Country of the Presidency of Bombay, a Hindu widow, who is sole or joint heir to her husband's estate, may adopt a son to her deceased husband without authority from her husband and without the consent of his kindred, if the act is done by her in the proper and *bona fide* performance of a religious duty, and neither capriciously nor from a corrupt motive nor in ignorance of her right. But she cannot adopt where her husband has expressly forbidden an adoption. (*Sir John Edge*). YADAO *v.* NAMDEO. **17 N.L.R. 145= 64 I.C. 536=43 I.A. 513 (P.C.).**

HINDU LAW—Alienation—Co-parcener.

——*Adoption—Widow—Mahratta School—Maheshwari Hindus domiciled in Bengal—Authority from husband or consent of* sapindas.

Among Maheshwari Hindus who had emigrated from Bikaneer and settled in Bengal and governed by the Mitakshara Law, it is open to the widow of a divided member to adopt without authority of the husband or the consent of the *sapindas*. (*Fletcher and Huda*, JJ.) MATHURA DASS KARNANI *v.* SRIKISSEN KARNANI. **44 I.C. 5=27 C.L.J. 517.**

Adoption—Widow—Motives.

——*Adoption—Widow—Motives*—Bona fides.

An adoption cannot be said to be made in the performance of a *bona fide* religious duty where the authority to adopt was given more than 30 years ago and the adoption is made by the widow with a view to her own advantage. (1 Mad. 174, Foll.) (*White*, C.J. *and Oldfield*, J.) KANDUKURI VEERA BASAVARAJU *v.* KANDUKURI BALASURYA. **25 I.C. 3= (1914) M.W.N. 502.**

[On appeal 48 I.C. 706=41 Mad. 998 (P.C.)]

Advancement.

See (1) BENAMI.
(2) TRUST ACT, S. 82.

Alienation.

See also HINDU LAW—
(1) DEBTS.
(2) JOINT FAMILY.
(*a*) FATHER.
(*b*) MANAGER.
(3) RELIGIOUS ENDOWMENT.
(4) WIDOW.

CO-PARCENER.
FATHER.
GUARDIAN.
MANAGER OF ENDOWMENT.
MANAGER OF JOINT FAMILY.
WIDOW.
WILL.

Alienation—Co-parcener.

——*Alienation—Co-parcener—Berar.*

The law of the Mitaksbara is to be interpreted in Berar in the same manner as in Bombay and according to that law a co-parcener has power to sell his share in the joint family property without the consent of his co-owners. (*Viscount Cave*). SYED KASIM *v.* JORAWAR SINGH. **43 M.L.J. 676=31 M.L.T. 46 (P.C.)= 16 L.W. 223=5 N.L.J. 209=18 N.L.R. 127= 21 A.L.J. 57=27 C.W.N. 179= 49 I.A. 358 (P.C.)=1922 P.C. 352.**

HINDU LAW—Alienation--Co-parcener.

——*Alienation—Co-parcener—Necessity—Charge of murder—Money raised for defence.*

Where a member of a joint Hindu family stood charged with murder and in order to defend himself he raised funds by charging the family properties, the alienation is justified by legal necessity. 26 M.L.J. 528 ; 34 A. 4, Ref. Where a member of the joint family sues for a declaration that a charge created upon the family property should be declared null and void on the ground that it was created without legal necessity the plaintiff should give *prima facie* evidence before the creditor is called upon to give evidence with regard to the validity of his document on which the claim is based. (*Rafique and Piggott*, JJ.) LALA RAM RAGHUBIR LAL *v.* DIP NARAIN SINGH. **45 A. 311 = L R. 4 A. 380 = 9 O & A L.R 349 = 21 A.L J. 168 = 1923 A. 287.**

——*Alienation—Co-parcener—Necessity—Antecedent debt—Exorbitant rate of interest—Liability of other members—Adult member joining in execution—Presumption of necessity—Setting aside alienation—Equities.*

Where an alienation of joint family property is effected by the concerted action of all the members of the joint family who had attained majority at the time a presumption arises in favour of such alienation having been made for real family necessity. Where the rate of interest specified in a mortgage is high and there is, in addition, a provision for a penalty on non-payment of interest punctually, the provision for compound interest and the penalty might be regarded as improvident and therefore not binding on the minor members of the joint family. The existence of an antecedent debt of the father does not justify his alienating the whole of the family property at a sum considerably less than the market value. Where in a suit by the sons to avoid an alienation, the debt was partly for binding necessity, the plffs. are bound to discharge the binding portion of the debt before obtaining possession of the property alienated. (*Piggott and Walsh*, JJ.) GOVIND DASS *v.* RAM CHARAN LONIA. **1923 A. 235.**

——*Alienation—Co-parcener.*

An alienation by a co-parcener would be justified if made either (1) in a season of distress, (2) for the sake of the family, (3) pious purposes. (*Mears*, C J. *and Banerji*, J) THAKURJI *v.* NANDA AHIR. **48 All. 560 = 19 A.L J. 580 = 63 I.C. 646 = 3 U.P.L.R. (A.) 75.**

——*Alienation—Co-parcener—Alienation by one member to another member.*

Where joint family property is transferred by one member to another member, a suit by the latter against a holder of a decree against the transferor, for declaration that the property is not liable to attachment and sale is not maintainable. (*Rafique and Stuart*, JJ.) RAMCHAND *v.* MATHURA CHAND. **60 I.C. 896 = 19 A.L.J. 299.**

HINDU LAW—Alienation—Co-parcener.

——*Alienation—Co-parcener—Consent of others.*

Joint family property cannot form the subject of gift, sale or mortgage by one co-parcener without the sanction, express or implied, of all the other co-parceners except during a "season of distress." (*Knox*, J.) THAKERJI *v.* NANDA AHIR. **55 I.C. 317 = 2 U.P.L.R. (All.) 120.**

——*Alienation—Co-parcener—Consent of others.*

Where one of two brothers in a Hindu family sells his property and there is no evidence of any quarrel between them there is a strong possibility that the other brother knew of the sale. (*Richards*, C.J. *and Rafique*, J.) MADHO RAM *v.* JAGA SINGH. **52 I C. 18 = 1 U.P.L.R (H.C.) 7.**

——*Alienation—Co-parcener--Setting aside—Right to.*

An alienation by one member of the joint family property purporting to be made on behalf of the family as a whole can be impeached by the other members on the ground of want of authority, or absence of legal necessity or family benefit ; but a stranger to the family cannot impeach it. (*Piggott and Walsh*, JJ.) BANSARI DAS *v.* SHEODARSHAN. **45 I.C. 451 = 16 A.L.J. 394.**

——*Alienation—Co-parcener—Disqualification—Leprosy.*

There is no principle of Hindu Law under which a co-parcener who contracts leprosy is disqualified from dealing with his own property or share in the joint family property for a necessary purpose. (*Piggott and Walsh*, JJ.) MAN SINGH *v.* GAILLI. **40 All. 77 = 43 I.C. 62 = 15 A.L.J 860.**

——*Alienation—Co-parcener—Agreement to sell.*

Agreement to sell by one brother with the consent and authority of the other is binding as against a subsequent purchaser from both. (*Richards*, C J. *and Bannerji*, J.) THAKUR DIN *v.* SEETLA SAHAI. **23 I.C 530 = 12 A.L J 52.**

——*Alienation—Co-parcener—Rights of alienee—Partition.*

Where the other co-parceners consent to an alienation by one of them, then the alienation is binding on them and the mortgagee is entitled to proceed against the property even though subsequently in partition it fell to some one else's share. 1 I.A. 106, Dist. (*Ryves and Piggott*, JJ.) SUNDAR LAL *v.* BRIJ LAL. **33 All. 543 = 21 I C. 734 = 11 A.L.J. 916.**

——*Alienation—Co-parcener.*

A member of a joint family cannot alienate the joint family property or his share in it without the consent of the other co-parceners or without legal necessity. (*Knox and Rafique*, JJ.) PRAG LAL *v.* RAMESHWAR DAYAL. **20 I.C. 921.**

HINDU LAW—Alienation—Co-parcener.

———*Alienation Co-parcener—Contract of sale—Specific performance.*

It is not open to one of two brothers forming a joint Hindu family to sell the property without the consent of the other and an agreement to sell by him cannot be specifically enforced. (*Griffin*, J.) SEETLA SAHAI *v.* THAKUR DIN.
20 I.C. 247=11 A.L.J 456.

———*Alienation—Co-parcener—Consent.*

One member cannot mortgage even his share of family property without the consent of others in United Provinces. (*Richards*, C.J. *and Banerji*, J.) BUDHUSING *v.* KAWALNUIN.
19 I.C. 430.

———*Alienation—Co-parcener.*

Per Karamat Hussain, J.:—A transfer by some only of the members of a joint Hindu Mitakshara family is void. 15 All. 339, Ref. (*Karamat Hussain and Chamier*, JJ.) BARAN DEO RAI *v.* RUP NARAIN. **11 I.C. 654 (All.)**

———*Alienation — Co-parcener — Legal necessity.*

If a member of a joint family mortgages a property to one and sells the same to another the vendee is entitled to question the mortgage for want of legal necessity. (*Richards*, C.J., *Banerjee and Chamier*, JJ.) MUHAMMAD MUZAMILULLAH KHAN *v.* MITHULAL.
38 All. 783=11 I.C. 220=8 A.L.J, 901.

———*Alienation—Co-parcener—Liability of others.*

Alienation of a joint family property by a co-parcener in whose name the property stands must be presumed to be effected by him on behalf of the joint family and as binding on the co-parcenary. (*Richards and Tudball*, JJ.) CHANDRA DEOMISSER *v.* HARPAL SINGH.
9 I.C. 293.

———*Alienation—Co-parcener.*

Where the added members had properly and wisely decided to get rid of property which was in a ruinous condition so as to be a burden to the family and which was ordered by the Municipality to be pulled down the transaction binds the minor co-parceners. Per *Shah*, J.—Benefit to the family may under certain circumstances mean a necessity for a transaction. (*Shah and Fawcett*, JJ.) NAGINDAS *v.* MAHOMED YUSUF.
64 I.C 923=23 Bom. L.R. 1094.

———*Alienation—Co-parcener — Rights of alienee.*

In Bombay the sale of a co-parcener's share is not invalid though the share is described in the deed as the whole property. The purchaser, however, cannot get joint possession but he may demand partition. He can however obtain a direction that he be left to recover the interest of the vendor in the particular property by a separate suit for partition in which all co-parceners and all family properties should be joined. (*Heaton and Hayward*, JJ.) PANDU *v.* GOMA RAMAJI. **43 Bom. 472=60 I.C. 765=21 Bom. L.R. 213.**

HINDU LAW—Alienation—Co-parcener.

——*Alienation—Co-parcener — Remedy of alienee—Partition suit.*

The remedy of the alienee from a co-parcener is to sue for a general partition, in case the other co-parceners claim their share of the alienated property (*Batchelor*, C.J. *and Kemp*, J.) HANMANDAS RAMDAYAL *v.* VALABHADAS SHANKARDAS **43 Bom. 17=46 I.C. 133=20 Bom. L.R. 472.**

——*Alienation — Co-parcener—Rights of alienee—Setting aside.*

Alienee from co-parcener only gets a right to partition and not to possession before such partition. A sale by one co-parcener even of his share can be set aside by his co-parceners if the sale is without consideration as it is void altogether. (*Scott*, C.J. *and Heaton*, J.) NARO GOPAL KULKARINI *v.* PARAGOWDA BASAGOWDA. **41 Bom. 347=39 I.C. 23=19 Bom. L.R. 69.**

———*Alienation—Co-parcener—Mortgage — Suit on—Other members, if parties—Partition.*

Where a creditor of a co-parcener's share sues to establish his mortgage, the other members of the family are not necessary parties and before executing his decree and purchasing his share he cannot ask for partition in the same suit. (*Davar*, J.) LALCHAND *v.* BALKRISHNA. **21 I.C. 689=15 Bom. L.R. 944, Note.**

———*Alienation—Co-parcener.*

No owner of property is competent to convey to a person a higher right than what he himself possesses and therefore no member of a joint family can, by alienation of his interest, prejudice the rights of any other member. (*Mookerjee and Buckland*, JJ.) JOGOBUNDU *v.* RAJENDRA. **66 I.C. 121=34 C.L.J. 29.**

——*Alienation—Co-parcener—Contract for sale—Specific performance.*

Where a co-parcener has contracted to sell a share of the joint family property to plaintiff representing he had authority to do so, specific performance may be decreed against him if the share allotted to him would suffice to fulfil the contract. (*Mookerjee and Walmsley*, JJ.) SHAMA CHARAN KOTAL *v.* KUMED DASI.
42 I.C. 378=27 C.L.J. 611.

———*Alienation—Co-parcener — Rights of alienee—Purchaser's right to joint possession—Transfer of Property Act, S. 44.*

A stranger purchaser of the share of an undivided Hindu co-parcener cannot claim to be put in joint possession of the family dwelling-house. He can either ask for delivery of possession of what he acquired by purchase, by partition in execution proceedings or bring a separate suit for partition (*Mookerjee and Roe*, JJ.) GRIJA KANTA CHAKARBUTTY *v.* MOHIN CHANDRA ACHARJEE.
20 C.W.N. 675=35 I.C. 294=23 C.L.J. 567.

HINDU LAW—Alienation—Co-parcener.

———*—Alienation—Co-parcener—Contract to sell—Suit for specific performance.*

In Bengal specific performance of a contract to sell by a co-parcener cannot be enforced because no co-parcener has any interest in the property which he can transfer and so he is incapable of performing it. (*Fletcher and Chatterjee*, JJ.) JANAKI NATH SINGH ROY *v.* JAMINI KANTA SINGH ROY. **22 I.C. 612.**

———*Alienation—Co-parcener— Agreement to sell or lease share—Specific performance.*

A member of a Mitakshara joint family is not entitled to any specific property and cannot make a valid alienation of it. An agreement by him to sell or lease his share is not specifically enforceable. If the manager contracts on behalf of himself and the other co-parcener to sell the entire property without necessity, the vendee will be entitled only to damages and not to specific performance. (*Jenkins*, C.J. *and Mookerjee*, J.) SHAIKA ABDUL RAHMAN *v.* JADUNANDAN SINGH JHA.
21 I.C. 523=18 C.L J. 344.

———*Alienation—Co-parcener—Rights of purchaser.*

Where a Hindu, governed by the Mitakshara alienates his share of the family property for no necessity or benefit of the family, there would remain nothing in the hands of the transferee after his death, for his surviving co-parceners are entitled to his share by survivorship. (*Harrington and Carnduff*, JJ.) JAGARNATH MISSIR *v.* SHAMA PANDEY.
18 I.C. 819.

———*Alienation—Co parcener— Agreement for sale—Specific performance.*

Specific performance of a contract to sell joint family property by the co-parceners cannot be enforced against all or some of them as they have no definite share to convey before partition. The remedy of the vendee is to sue for damages. (1895) 1 Q.B. 683, Foll. (*D. Chatterjee*, J.) JADHU NANDAN SINGH *v.* ABDUL RAHAMAN. **11 I C. 892= 16 C.W.N. 93.**

———*Alienation—Co-parcener.*

An alienation which is not made by one of the co-parceners of a joint Hindu family for family necessity is liable to annulment in its entirety. (*Le-Rossignol and Wilberforce*, JJ.) MUNSHI LAL *v.* SOHAN LAL.
66 I.C. 881=3 Lah. L.J. 137.

———*Alienation—Co-parcener— Rights of alienee—Subsequent partition—Effect.*

Where partition takes place after the mortgage of his shares by the co-parcener, the mortgagee should proceed only against those items which fell to the mortgagor on partition. (*Chevis and Le-Rossignol*, JJ.) PREM SHAH *v.* KABIN CHAND. **48 P L.R 1916= 30 I.C. 31=128 P.W.R. 1915.**

HINDU LAW—Alienation—Co-parcener.

———*Alienation—Co-parcener—Will—Validity of.*

Will by a co-parcener of his share of the joint family property in favour of distant collateral is valid. (*Shah Din and Chevis*, JJ.) SHAM LAL *v.* CHHAJJU MAL.
31 P.W.R. 1913=19 I.C. 51= 76 P.L.R. 1913.

———*Alienation—Co-parcener — No-consent of others—Suit for cancellation of alienation —Valuation.*

In a suit by one member of a joint family for the cancellation of a mortgage executed by another without his consent, the value of the suit is the mortgage money payable and not the share mortgaged. In Madras and Bombay, an alienation by one member of a joint Hindu family, without the consent of the other members is valid to the extent of the alienor's share; but in Bengal, Punjab, and United Provinces, unless such an alienation is for the benefit of the family it will not bind the other members and it may be annulled at their instance. (*Rattigan*, J.) PIARE LAL *v* RAM CHAND. **21 P.R. 1912=11 I.C. 443= 112 P.W R. 1911.**

———*Alienation — Co-parcener — Alienee's rights—Suit by surviving member for recovery of property alienated—Allotment of property alienated to vendee—Conditions—Mesne profits —Plaintiff's right to—Manager — Sale by— Voidable and not void.*

An alienee from an undivided co-parcener has a right to sue for the partition of the family property and to recover his alienor's share, in the case of a sale of an undivided share, that share, and in the case of a sale of a specific item of property, an equitable right to have that property assigned, if possible, to his alienor's share. The share of the alienor which passes to the alienee is the share to which the former was entitled at the date of alienation. In a suit by a co-parcener for the recovery of the property alienated by another co-parcener or for partition, the alienee is entitled to claim partition, if it can conveniently be done. In a suit by a grandson to recover possession of properties sold by his deceased grandfather, the Court below held that the sale was not for necessity and gave a decree to the plaintiff for a division of the property into two parts and for recovery by plaintiff of one-half with mesne profits from the date of sale. On appeal by the alienee it appeared that the plaintiff was the only surviving member of the family, and that, at the date of the sale, the grandfather was entitled, as and for his share, to property at least equal in value to the property sold and that there would be no inconvenience in allotting entire property to the alienee. *Held*, that the alienee was entitled to retain the whole of the suit property, that the plaintiff's suit should have been dismissed, and that the plaintiff was not therefore entitled to any mesne profits. *Held further* that, the sale being by a manager the plaintiff would in no event

HINDU LAW—Alienation—Co-parcener.

have been entitled to mesne profits before the date of plaint. (*Phillips and Venkatasubba Rao*, JJ.) RAMASWAMI AIYAR *v.* VENKATARAMA AIYAR. **46 Mad. 815 = 45 M.L.J. 203 = 18 L.W. 188 = (1923) M.W.N. 786 = 1924 Mad. 81.**

——*Alienation— Co-parcener — Rights of alienee—Allotment of whole of alienated property to purchaser in — Conditions—Sale by member on his own behalf and on behalf of other members—Sale not in interests of family —Security bond taken by purchaser from vendor to indemnify former against loss due to claim by other members—Effect.*

A purchaser from a member of a Joint Hindu family of property which that member has no right to sell, it being the joint property, can enforce the sale only by a partition of the entire family property ; and if, in such partition, the property sold can, with due regard to the interests of the other sharers to the debts due by the family, and to an equitable allocation of the various items of family property to shares of the several co-parceners, be wholly allotted to the vendor's share, the purchaser will be entitled to the whole property which the vendor professed to convey to him. Whether the alienee in such cases can get the property does not depend upon whether a suit is first brought by him for a partition of the whole joint property or by the other co-parceners for a partition of a part. The decision in 40 C. 966 ; 25 M.L.J. 512 (P.C.) is authority for the position that even in a suit by the other co-parcener for a share of the alienated property, it would be open to the Court on the application of the alienee to decree a general partition in which the principle of equity mentioned above should be applied. The principle of equity applies equally to cases in which the alienor purports to sell the property on behalf of himself and of the other co-parceners and to those in which he purports to sell the property as his own. It applies whether or not the sale was a proper alienation in the interests of the joint family. The purchaser is not to be deprived of this equity merely because, at the time of the sale, he took from the vendor a security bond (in the form of a charge on other joint family property) by which the vendor gave him an indemnity against the loss that might arise by any claim of the vendor's minor son. (*Sehwabe*, C.J. *and Wallace*, J.) DAVUD BEEVI AMMAL *v.* RAMAKRISHNA AIYER **44 M.L.J. 309 = 17 L.W. 332 = (1923) M.W.N. 202 = 32 M.L.T. (H.C.) 263 = 1923 Mad. 457.**

——*Alienation—Co-parcener—Share of, in specific items of family property attachable.*

There can be no attachment of a co-parcener's share in each item of joint family property but only of his undivided share in the whole of the joint family properties. (*Oldfield and Bakewell*, JJ.) JAGANATHAN SUBBIAH *v.* VENKATA SUBBIAH. **53 I.C. 336 = 10 L.W. 449.**

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——*Alienation—Co-parcener—Validity of —Madras.*

According to the Mitakshara Law in the Presidency of Madras, a mortgage by a co-parcener of his share of the joint family properties is valid though not supported by family or other necessity. 35 Mad 47, Foll. ; 39 All. 500, Dist; 40 I.A. 171, Foll. (*Phillips and Krishnan*, JJ.) BOGISETTI AKKA NAGAMA *v* PANGANAMMA KRISHNA RAO. **10 L.W. 153 = 52 I.C. 746 = (1919) M.W.N. 536.**

——*Alienation—Co-parcener—Gift—Consideration of marriage.*

In the Madras Presidency it is competent to a co-parcener to alienate his share in the whole of the family property or in any particular item of it, for valuable consideration but he cannot make a valid gift of his share. This power of the co-parcener to alienate his share for consideration is not confined to sales or mortgages, but includes every kind of alienation for valuable consideration. Where a co-parcener settles property on the bridegroom-elect in consideration of the latter marrying the co-parcener's foster-daughter, the alienation is supported by consideration and is enforceable against the co-parcener's share in the family properties. (*Abdur Rahim and Oldfield*, JJ.) NANJUNDA SAMI CHETTY *v.* KANAGARAJU. **42 Mad. 164 = 49 I.C. 666 = 36 M.L.J. 242 = 25 M.L.T. 374 = (1919) M.W.N. 139 = 9 L.W. 132.**

——*Alienation—Co-parcener—Gift.*

By Hindu Law a member of a joint Hindu family cannot make a gift of his share to another member. (*Ayling and Seshagiri Aiyer*, JJ.) KAVERAMMA *v.* VISHNU KANKULLAYYA. **49 I.C. 263.**

——*Alienation — Co-parcener — Decree against some co-parceners—Execution sale—Rights of other co-parceners.*

A collective decree obtained against some of the co-parceners in a joint family on a sham transaction is binding on those co-parceners themselves but not the others. If the joint family property is sold in execution of the decree the other co-parceners can sue for the recovery of their shares only. In such a suit a decree for partition can be made without driving the purchasers to a fresh suit. (*Spencer and Krishnan*, JJ.) NADHAMUNI IYER *v* APPU ODAYAN. **48 I.C. 799.**

——*Alienation—Co-parcener—Contract to sell—Rights of alienee.*

In a suit for specific performance of contract to sell his share in certain joint family properties by one member, the other members are not proper parties. If however there had been partition and of fraudulent design against the alienee be proved then the other members may be proper parties. Right to sue for partition arises only after the legal title is transferred.

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(*Wallis*, C.J., *Atdur Rahim and Srinivasa Aiyangar* JJ.) T. RUNGAYYA REDDI *v.* SUBBRAMANYA AIYAR. **40 Mad 363 = 32 M.L.J. 575 = 5 L W, 797 = 40 I.C. 429 = 21 M L.T. 385 (F.B.).**

———*Alienation—Co-parcener—Gift.*

Gift by a co-parcener of his undivided share is unenforceable. (*Abdur Rahim and Oldfield*, JJ.) AYAVIER *v* SUBRAMANIA AIYAR. **32 M.L J. 439 = 40 I C. 205 = 6 L.W. 22.**

———*Alienation—Co-parcener—Effect of,*

An alienation by a member of a joint Hindu family does not disturb the joint status. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATARAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30 = 38 I.C. 270 = 5 L.W. 482.**

———*Alienation — Co-parcener—Rights of alienee.*

A purchaser of an undivided share of a member of a joint Hindu family does not become a tenant-in-common with the other members of the family. (*Abdul Rahim, Seshagiri Iyer and Phillips*, JJ.) BALABHADRA PATRO *v.* KHETRADOSS. **31 M.L J. 275 = 4 L W. 99 = 37 I.C. 168 = (1917) M.W.N. 149.**

———*Alienation — Co-parcener — What passes.*

Where a man has a double capacity and deals in only one capacity he must be deemed to have parted with interest vested in an undisclosed capacity as well. 42 Cal. 56, Foll. An alienee from a co-parcener is not entitled to joint possession with the other co-parceners. His right is to obtain by partition the share to which his alienor was entitled. 39 Mad. 205; 38 Mad. 684, Foll.; 5 Cal. 148; 10 Cal. 626, Ref. (*Seshagiri Aiyar and Phillips*, JJ.) AUDIMULA MUDALI *v.* ALAMELAMMAL. **(1916) 2 M W.N. 115 = 36 I.C 365 = 4 L W. 126.**

———*Alienation — Co-parcener — Sale of—Whole interest in the joint family—Proof—No disruption of status.*

Per *Moore*, J. (*Sadasiva Iyer*, J. *Contra.*)—When a father alienates his share in the whole of the family properties, he continues to be a member of the joint family even with sons subsequently born, but the latter can claim no share, no property being in existence at the dates of their birth. 22 I.C. 555; 25 I.C. 585; 34 Cal. 372, Appr (*Sadasiva Aiyar and Moore*, JJ.) SOUNDRARAJAN *v* SARAVANA PILLAI. **34 I.C, 794 = 30 M.L.J. 592.**

———*Alienation—Co-parcener — Agreement to sell—Specific performance.*

Specific performance of a contract entered into by one deceased member can be enforced against surviving members. (*Coutts-Trotter and Seshagiri Aiyar*, JJ.) NOCHAT KIZHAKKE MADATHIL VENKATESHWARA IYER *v.* KALLORE ALI ILLATH RAMAN NAMBUDRI. **3 L.W. 435 = 33 I.C. 696 = 19 M.L.T. 329.**

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———*Alienation — Co-parcener — Specific property—Rights of alienee in suit.*

If, in a partition of the family property, the alienated property, could have been allotted to the alienor without injustice to the other co-parceners, the alienee of specific properties from a co-parcener, can be given possession of the properties purchased by him and the alienor should be muloted to that extent of his share. (*Sankaran Nair and Tyabji*, JJ.) SENCHURAMA NAIDU *v.* ANNAPURNI AMMAL. **30 I.C. 79.**

———*Alienation—Co-parcener.*

A co-parcener cannot alienate any specific property belonging to the joint family so as to entitle the alienee to that property. All that the alienee gets is to intervene in a partition suit and see the equities are so adjusted that the properties alienated fall to the share of the alienor. (*Sankaran Nair and Spencer*, JJ.) DUVUR SUBBA REDDI *v.* KAKUTURU VENKATARAMA REDDI. **38 Mad. 1187 = 26 I.C. 983 = 16 M.L.T. 370.**

———*Alienation — Co-parcener — Rights of alienee—Mesne profits.*

An alienee from a co-parcener of his undivided share in the joint family property does not obtain a vested interest in the properties purchased by him and cannot claim past mesne profits from the other members of the family from the date of purchase to the date of suit. His remedy is a suit for partition. 28 Bom. 201; 25 Mad. 690; 35 Mad. 47; 23 M.L.J. 64, Dist; 26 M.L.J. 576, Foll; 5 Cal. 148, P.C.; 10 Cal. 626 (P.C.) and 40 Cal. 966 (P.C.), Ref. (*Wallis*, C.J. *and Kumaraswamy Sastri*, J.) MAHARAJA OF BOBBILI *v.* VENKATARAMANUJULU NAIDU. **39 Mad. 265 = 16 M.L.T. 181 = 25 I.C. 585 = 27 M.L J 409.**

———*Alienation—Co-parcener — Transferee from—Adverse possession.*

A transferee from a Hindu co-parcener of his interest cannot claim adverse possession against the other members of the family. (*Ayling and Tyabji*, JJ.) MUTHU KRISHNA IYENGAR *v.* SANKARA NARAYANA IYER. **16 M L.T. 196 = 1 L W 699 = (1914) M.W.N. 708 = 25 I.C. 573 = 27 M L.J. 600.**

[This view is open to question.]

———*Alienation—Co-parcener — Rights of alienee—Usufructuary mortgage by one co-parcener—Rights of mortgagee.*

A usufructuary mortgagee from one co parcener is entitled to a decree for joint possession along with the others. Per *Napier*, J.:—He is not entitled to a decree for joint possession. He is only entitled to a declaratory decree and he must work out his rights by a partition suit. (*Oldfield and Napier*, JJ.) KOTA BALABHADRA PATRO *v.* KHETRA DOSS. **25 I C. 401 = 16 M L.T. 229.**

[*See* On Appeal 31 M L.J. 275 = 36 I.C. 801 = 4 L.W. 99,]

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———*Alienation — Co-parcener—Rights of alienee.*

If the alienation is not binding on the family the alienee acquires the interest of the alienor at the date of the alienation without any increase or decrease by subsequent changes in the joint family. 35 Mad. 46. Ref. (*Wallis*, J.) SITARAM NAIDU *v.* BALAKRISHNA NAIDU.
26 M.L.J. 604=22 I.C 638=15 M L.T. 78.

———*Alienation — Co-parcener — Effect—Division in status.*

An alienee from a co-parcener of some items of the family property has no right to sue for partition and allotment to him of his share of those items irrespective of the rights of others. 20 Cal 533 ; 24 All. 483 ; 28 Bom. 201 ; 11 B.H.C.R. 72 Appr. Nor has he a right to possession or the status of a tenant-in-common though he might have obtained symbolical possession in execution of a decree against one co-parcener. 5 Cal. 148 ; 10 Cal. 626 Foll. A transferee gets only an equity *i.e.*, right to partition and the transferor remains a member of the family until partition is effected. The alienee may sue for general partition. 34 Mad. 269 Appl. (*Sankaran Nair and Bakewell*, JJ.) NANJAYA MUDALI *v.* SHANMUGA MUDALI. **38 Mad. 684=26 M.L J 576=15 M.L.T. 186=22 I.C. 555=(1914) M.W.N. 356.**

———*Alienation — Co-parcener — Partial necessity.*

Where one co-parcener sues to set aside a sale made by another and it is found that part only of the consideration money was binding on the family he can recover his share on payment of his share of that part of the purchase money. (*Sadasiva Aiyar and Spencer*, JJ.) SUBBAIYA MUDALIAR *v.* THULASI MUDALIAR **14 M.L.T. 537=1 L.W. 65=22 I C 44=(1914) M.W.N. 16.**

———*Alienation — Co-parcener — Setting aside—Binding nature of—Part of consideration—Nature of decree to be passed in suits by other members.*

In cases where an undivided member of a joint Hindu family sells certain ancestral property for a consideration of which a certain portion is held to be binding on the family, the member who seeks to have the sale declared not valid and binding cannot get a decree for recovery of his share, unless he pays his share of that portion of consideration held binding on the family. The principle is that consideration for the sale must be distributed over the shares of the members in proportion. 30 Mad. 89 Not foll. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) VADIVALAM PILLAI *v.* NATESAM PILLAY. **37 Mad. 435=12 M.L.T. 192=23 M.L.J. 256=16 I.C. 835=(1912) M.W.N. 851.**

———*Alienation — Co-parcener — Right of alienee—Joint possession.*

HINDU LAW—Alienation—Co-parcener.

Alienee of the share of a co-parcener could not be granted joint possession nor could a share be awarded to him. He must bring a suit for general partition. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) NARAYANA SWAMI NAIDU *v.* THIRUMALASETTI SUBBAYYA. **24 M.L.J. 79=16 I.C. 698=(1913) M.W N. 96.**

———*Alienation—Co-parcener—Effect of—Severance in status.*

On alienation by a co-parcener of his share in the family property the joint tenancy is put an end to and the co-parceners become tenants-in-common. 35 Mad. 47 Ref. *Quære.*—Whether the transferor co-parcener takes by survivorship or inheritance the share of another co-parcener who dies subsequent to alienation. (20 Mad. 690, 717, Ref.) (*Benson and Miller*, JJ.) SRINIVASA SUNDARA THATHA CHARIAR *v.* KRISHNASWAMY IYENGAR.
(1912) M.W.N. 379=13 I.C. 354=11 M.L.T. 312.
[This is not good law. *See* 39 Mad. 265=25 I.C. 585 F.B.]

———*Alienation—Co-parcener—Effect of—Partition.*

Where a co-parcener alienatee his share in the family property the joint family ownership becomes severed to the extent of the share of the alienating member. But it does not affect the joint ownership of all the members including also the transfer or with respect to the other properties. The alienee acquires the share of his alienor as it stood at the date of the alienation. (*Benson and Sundara Aiyar*, JJ.) SUBBA ROW *v.* ANANTHANARAYANA IYER.
23 M.L.J. 64=14 I.C. 524=11 M.L.T. 393.

———*Alienation — Co-parcener — Right of alinee*—Bona fide *purchaser.*

The equitable lien which a transferee from a co-parcener has over his transferor's undivided share, cannot be enforced against *bona fide* purchasers for value without notice of the undivided interest. 15 All. 339 P.C. 18 Cal. 157 P.C. Ref. (*Sundara Iyer and Spencer*, JJ.) VENKATESA IYENGAR *v.* KOMALA AMMAL.
(1912) M.W.N. 65=11 M.L.T. 84=13. I.C. 468=22 M.L.J. 212.

———*Alienation — Co-parcener — Alienee's rights—Share.*

Per *Sundara Aiyar*, J. :—An alienee from a co-parcener obtains title to the alienor's share in the property alienated as it was on the date of alienation. (*Abdur Rahim and Sundara Iyer*, JJ.) DORAISAWMI SERUMADAN *v.* NANDISAWMI SELUVAN. **10 M L T 418=(1911) 2 M.W.N. 450=12 I.C. 695=21 M.L.J. 1041.**
[On appeal 21 I.C. 410=38 Mad. 118.].

———*Alienation—Co-parcener — Rights of alienee—After-born son.*

The mortgagee from a Hindu co-parcener can proceed against the share of a son subsequently born in the family. An alienee of the

interest of an undivided co-parcener takes the co-parcener's interest as it stood on the date of alienation and is not affected by subsequent births in the family. 14 Mad. 403 not appr.; 25 Mad. 690; 10 Cal. 626 (P.C.), 5 Cal. 148; Ref. (*White*, C.J., *Benson*, *Munro and Sankaran Nair*, JJ.) CHINNU PILLAI *v.* KALIMUTHU CHETTI. **35 Mad 47=21 M L.J 243= (1911) 1 M.W.N. 233=9 I C 596= 9 M L.T 389 (F.B).**

———*Alienation—Co-parcener—Attachment—Effect of death.*

The death of the member does not affect the rights of the creditor who has attached the share of the deceased in his life-time. (*White*, C.J. *and Ayling* J). MURUGAIYA MUDALIAR *v.* AYYADORAI MUDALIAR. **9 I C 286= 9 M.L.T. 96.**

———*Alienation — Co-parcener—Gift by—Void.*

A gift even of his own share by an undivided co-parcener is invalid. (*Baker*, J C.) MULLA FAIZ ALI *v.* MT. HARKUAR. **1923 Nag. 334.**

———*Alienation—Co-parcener.*

Per *Dhobley*, *A J.C.*—Alienation for value by co-parcener is valid in C.P. and Berar to the extent of co-parcener's interest though not for legal necessity. (*Kotwal*, *Dhobley and Prideaux* A.J.Cs.) DHADABAI *v.* NARAYAN. **5 N.L.J. 73=1921 Nag. 28.**

———*Alienation — Co-parcener—Execution sale of undivided share in ancestral property—Rights of execution purchaser.*

An execution purchaser of an undivided share in ancestral property is not entitled to sue for profits accruing therefrom without first bringing a suit for partition of the share purchased as the auction sale will not effect a division of the ancestral property. (*Macnair*, A.J.C.) SIDH GOPAL *v.* HARI LAL. **59 I.C. 428.**

———*Alienation—Co-parcener—Right of.*

In Central Provinces, an alienation by a co-parcener is valid to the extent of the alienor's own interest in the property. (*Kotval*, A J.C.) SETH KISAN LAL *v.* NATHU. **56 I.C. 44=16 N.L.R. 131.**

———*Alienation— Co-parcener — Right of transferee—Central Provinces.*

The equity to enforce a partition in favour of a *bona fide* transferee for value is recognised in Central Provinces in the case of an alienation by co-parcener of his share in the joint family property. (*Findlay*, A.J.C.) NANHUSAC *v.* GANPATI. **53 I.C. 231.**

———*Alienation—Co-parcener—Mortgage of share.*

A co-parcener can mortgage his own share of the family property without any such necessity

as is binding on all the other co-parceners. 5 Cal. 148, P.C.; 5 Bom, 48, P.C.; 15 All. 339, P.C.; 39 All. 437, P.C.; 39 All. 500, P.C., 18 Cal. 157, P.C., Ref. (*Batten*, A.J.C.) BEARI LAL *v.* HUKUMCHAND. **46 I.C. 754.**

———*Alienation—Co-parcener—Sale or gift of a member's share.*

Under the law of the Mitakshara joint family property owned by the members of the family as co-parceners cannot be the subject of a gift, sale or mortgage by one co-parcener except with the consent, express or implied of all the co-parceners. Any deed of gift, sale or mortgage granted by one co-parcener on his own account of or over the joint property is invalid and the estate is wholly unaffected by it and it entirely stands free of it. 20 All. 437, Ref. (*Drake Brockman*, J.C.) RAO VINAYAK *v.* LAXMAN. **44 I.C 51=14 N.L.R. 56.**

———*Alienation —Co-parcener — Alience's right to mesne profits.*

In a suit by an alienee from a co-parcener for partition, he is not entitled to past mesne profits. (*Mitra*, A J.C.) AMRITRAO *v.* GOVIND. **21 I.C, 590=9 N.L.R. 145**

———*Alienation — Co-parcener — Central Provinces.*

In Central Provinces one co-parcener, may at any time alienate for value, his share of the ancestral undivided estate by private arrangement. (*Drake Brockman*, J C.) HIRA RAM *v.* UDHE RAM. **19 I.C. 861=9 N.L.R. 74.**

———*Alienation—Co-parcener—Rights of parcener and his transferee.*

A parcener in a joint Hindu family, can only claim by partition a severence of his own share, and cannot compel the other parceners to make a partition *inter se*. He can, if excluded from the enjoyment of the family properties claim a restoration to joint possession without suing for partition. But a purchaser from a parcener of his share in a specific property cannot get joint possession of the part purchased but must sue for partition of the whole estate. (*Stanyon*, A.J.C.) MOHAN LAL *v.* TEKCHAND. **18 I C. 826= 9 N L.R. 18.**

———*Alienation—Co-parcener—Consent of other members.*

A sale effected by a member of a joint Hindu family is not necessarily void, but only voidable, if an objection was taken to it by the other members of the joint family; similarly a gift by a member with the consent of the other members of the family is valid. (*Kanhaiya Lal*, J.C.) MAHABIR PANDE *v.* MATHURA PRASAD. **9 O & A.L.R 822=1924 Oudh 138.**

———*Alienation— Co-parcener—Necessity—Recitals—Effect.*

One member of a Hindu family executed a mortgage. Its recitals do not form by themselves evidence that the deed was executed for

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legal necessity but there must be independent evidence thereto. (*Syed Wazir Hasan*, A.J C.) RAM NATH *v.* RAM HARAKH. **10 O.L J. 245 ; 9 O. & A.L R. 857 = 1924 Oudh. 49.**

———*Alienation— Co-parceners— Mortgage by members—Legal necessity—Personal decree.*

Where a mortgage is executed by some members of a joint family but the creditor seeks to enforce the mortgage debt against the mortgagor personally and not against the mortgaged property, the question of necessity does not arise, in the absence of fraud, undue influence or other circumstances which would invalidate the contract. The defendants who entered into the covenant are clearly personally liable and the other defendants are only liable to the extent of the assets of the executants who are dead which have come into their hands. A personal decree could be passed against the sons and grandsons of the deceased executants who had been impleaded on the ground of pious obligation. 41 A. 571 ; 19 O. C. 159 : 39 A. 437, Rel. (*Daniels and Lyle*, A.J.C.) MAHRAJ PRAG DIN *v.* BHAGWATI SAHAI. **66 I.C. 687 = 8 O L J. 418.**

———*Alienation—Co-parceners— Alienation by some of their share—Subsequent donee from all the co-parceners—Rights of.*

Two out of four cousins who formed a joint family, sold to R. a certain area of revenue paying land belonging to the joint family for Rs. 800. Subsequently after the death of one of the four cousins, the remaining cousins, forming the joint family, made a gift of the entire property in a certain mahal to G. Thereupon G along with other co-sharers of the village sued R for the possession of the area of land sold to him by the two cousins on the basis that the transfer of joint Hindu family property by some members of the joint family only was invalid. *Held*, that G can set up the invalidity of the sale in favour of R and that no condition could be imposed on the plaintiffs to repay the sale price to R before obtaining possession. (*Dalal and Wazir Hasan*, A.J.Cs.) RAGHUBAR PANDE *v.* GOKUL PRASAD. **65 I.C. 107 (2) = 24 O C. 307.**

———*Alienation— Co-parcener — Rights of other members—Mortgage.*

A mortgage of joint family property by one member of the joint family is voidable and not void by the others whose rights are invaded. A mortgagee brought a simple money suit on the dismissal of his previous suit for foreclosure on the ground that the mortgaged property is ancestral joint family property. *Held*, that the mortgagee could obtain relief under S. 65, Contract Act even in the absence of a personal covenant in the bond. The said contract having become void in the defence raised by the sons, the consideration failed from the date of the defence in the foreclosure suit and the suit was barred as limitation began to run from the date of the decree. (*Lindsay*, J.C.) SHAMBU *v.* NAND KUMAR. **58 I C. 963 = 23 O C 284.**

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———*Alienation—Co-parcener — Rights of alienee.*

An alienation by a co-parcener without the consent of all the other co-parceners is wholly invalid and the estate is wholly unaffected. 39 All. 437 ; 44 I.C. 51, Rel. Silence on the part of co-parceners does not amount to consent so as to validate an alienation by a co-parcener. (*Lindsay*, J.C.) NADIR SINGH *v.* INDRA SINGH. **46 I C. 860 = 21 O C. 156.**

———*Alienation—Co-parcener — Alienation to others—Effect.*

Alienation by one member to remaining members is as valid as a transfer to a stranger with the consent of all. 16 All. 369, Fol. (*Kanhaiya Lal*, A.J.C.) BISHUN SARUP *v.* NAHI MOHAMMAD KHAN. **42 I.C. 712 = 20 O.C. 277.**

———*Alienation — Co-parcener—Rights of alienee — Partition—Rights of mortgagee — Share converted into cash.*

Transfers of a share in an undivided estate by one co-sharer does not affect the interests of his co-sharers injuriously and where a non-fraudulent division of the undivided shares subsequently takes place the proper course for the transferee to follow is the transmuted security, although in cash, in the hands of his transferor. 16 O.C. 161, Expl. (*Stuart*, A.J.C.) ABDUL WAHAB. *v.* BASANT LAL. **41 I.C. 413 = 4 O L J. 386.**

———*Alienation — Co-parcener—Power to dispose by will.*

A co-parcener has no power to dispose of ancestral property even though not immoveable by will. 8 M. H. C. R. 6 ; 16 Mad. 353, Ref. (*Stuart*, J.C. *and Kendall*, A J.C.) GUR NARAIN *v.* GULZARI LAL. **1 O L J. 503 = 25 I.C. 917 = 17 O.C. 318.**

——*Alienation—Co-parcener—Voidable.*

A mortgage by a member of a joint Hindu family is not void but simply voidable at the instance of other members. (*Lindsay*, A J C.) DEBI PRESAD *v.* SHRO NARAIN. **21 I.C. 581.**

———*Alienation—Co-parcener—Effect.*

A co-parcener has no authority to mortgage without the consent of other sharers his undivided share in a portion of the joint family property in order to raise money on his own account. 12 N L.R. 1, (F.B.), Foll. (*Lindsay*, A.J.C.) BINDA PRASAD *v.* GAYA PRASAD SINGH. **13 I.C. 547.**

———*Alienation—Co-parceners—Invalidity.*

Where a co-parcener creates a mortgage over joint family properties on his own account the mortgage is invalid even as regards his own share in the family property. (*Das and Adami*, JJ.) DEBI LAL SAH *v.* NANDKISHORE GIR. **1 P. 266 = 3 Pat. L T 759 = 1922 P. 22.**

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———*Alienation — Co-parcener — Rights of alienee— Mortgagee — Rights of mortgagee— Charge against mortgagor's share.*

A mortgage of the whole or share of the joint family property of a Mitakshara family, unless justified by legal necessity or by an antecedent debt, or assented to by the other members of the family is void and inoperative as against the property and gives the mortgagee no rights even against the mortgagor's undivided share. Where, however, the mortgagor's share has been separated from that of the other members of the family an actual partition by metes and bounds not being essential for this purpose or where the share has by legal process been attached or sold at the instance of the creditor it may become available as security for the mortgage-debt. In special circumstances where the property has already passed into the hands of the mortgagee, the Court, if satisfied that the equities of the case require it, may, in its discretion, set aside the alienation upon the terms that the property when restored shall be held separately, the share of the mortgagor being subject to the lien for the mortgage debt and interest. (*Miller and Mullick*, JJ.) AMAR DAYAL SINGH *v.* HARA PRASAD SAHU.

1 P.L.T. 511=58 I.C. 72=5 P.L.J. 605.

———*Alienation— Co-parcener—Necessity— Expenses of defending in criminal case.*

A member of a joint Mitakshara family is entitled to use the family funds in repelling a criminal charge made against him. (*Das and Coutts*, JJ.) PREM SUKH DAS *v.* RAM BUJHAWAN MAHTO. **1 P.L.T. 34=52 I.C. 964= 1919 Pat. 451.**

———*Alienation — Co-parcener — Alienee's rights.*

A mortgagee of an undivided share in joint property is bound by a partition of the property amongst the co-sharers and if the property mortgaged to him does not form part of the share of his mortgagor, he can only look to the share of the joint property which his mortgagor gets as a substitute, for the security of his mortgage debt. 1 I.A. 106, Foll.; 24 All. 483; 20 Cal. 533, Ref. (*Atkinson*, J.) BARHAMDEO NARAYAN *v.* HAJARI LAL.

39 I.C. 586.

———*Alienation—Co-parcener — Undivided share — Execution sale of member's share— Distinction—Suit by purchaser for possession in both cases—Maintainability.*

One member of a Hindu joint family cannot by a deed transfer his undivided share in the family property or give the transferee the right to apply for partition; but where in execution of a decree the undivided interest of a member of a joint Hindu family has been put up for sale, the purchaser can sue for partition of the interest purchased. (*Chamier*, C.J. *and Roe*, J.) SOMAN KOERI *v.* RAM KINKER DAS.

1 P.L.W. 16=38 I.C. 222= 1917 Pat. 128.

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———*Alienation—Co-parcener — Charge— Creation of—Effect.*

A charge created by a co-parcener on his share of the property without necessity cannot survive him. (3 B.L.R. 31; 5 Cal 855: 18 Cal. 157; 19 C.W.N. 849, Ref.; 3 Cal. 198; 5 Cal. 148 Ref. (*Roe and Jwala Prasad*, JJ.) JWALA PRASAD *v.* PROTAH UDAI NATH SAHI DEO.

1917 Pat. 27=2 Pat. L.W. 406= 37 I.C. 184=1 Pat. L.J. 497.

———*Alienation — Co-parcener—Rights of alienee—Mortgage—Equity.*

Under the Hindu Law as administered in the Punjab the interests of a co-parcener cannot be sold for consideration. But a mortgagee has an equity against the interest of the mortgagor. The manager of the family can alienate the coparcenary property for necessary purposes. If the manager happens to be the father he can alienate family property to discharge antecedent debts *i.e.*, debts previously incurred wholly apart from the security afforded by the joint family estate. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PARKASH.

69 I.C. 602.

———*Alienation — Co-parcener—Rights of alienee—Mesne profits.*

Per *Crouch*, A.J.C.:—In case where an undivided member of a co-parcenary purports to sell a particular parcel of the joint estate he can only transfer such interest, right and title as is actually vested in him. The alienee is neither entitled to joint possession nor to partial partition; and the only right he acquires is a right to compel general partition as his vendor might have compelled and an equity to have the particular property, he purchased, allotted, if possible, to his share. 11 B.H.C.R. 76 and 28 Bom. 201, Ref. The possession of a transferee from a Hindu father under a deed is not unlawful until repudiation. 45 I.C. 284 (P.C.), Ref. But even afterwards mesne profits are not to be awarded as of right but only as damages in the discretion of the Court. 39 All. 61, Ref., 23 M.L.T. 243, Dist. (*Pratt*, C.J. *and Crouch*, A.J.C.) DULARAM RINIOMAL *v.* BADALDAS JAMIATRAI.

38 I.C. 478=10 S.L.R. 34.

Alienation—Father.

———*Alienation — Father—Manager can mortgage joint property for moral purposes or to pay antecedent debt.*

(1) The managing co-parcener of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity; but (2) if he is the father and the reversioners are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt it would not bind more than his own interest. (*Sahu Ramchandra* v. *Bhup Singh*).

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44 I.A. 126, *Dist.* (4) Antecedent debt means antecedent in fact as well as in time; that is to say, that the debt must be truly independent and not part of the transaction impeached. (5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead. (*Lord Dunedin*). RAJA BRIJ NARAIN RAI *v.* MANGLA PRASAD RAI.
21 A.L.J. 934 (P.C.)=46 M.L.J. 23=19 L.W. 72=33 M.L.T. (P.C.) 457=46 A. 95=51 I.A. 129=6 L.R. P.C. 1=28 C.W.N. 253=5 P.L.T. 1=2 Pat. L.R. (Civ.) 41=1924 P.C. 50=(1924) M.W.N. 68.

———*Alienation—Father—Invalid mortgage is not good consideration for later sale.*

A mortgage of joint family property which is invalid on that date, cannot become a just and legal consideration for a later sale, on the principle of antecedent debt. The antecedency should be one not only in time but in fact. Case law referred to. The doctrine of pious obligation cannot be invoked against grandsons when the sons are alive. (*Lord Shaw*). CHET RAM *v.* RAM SINGH. **44 All. 368=43 M.L.J. 98=L.R. 3 P.C. 141=27 C.W.N. 150; 24 Bom L.R. 1231=16 L.W. 89=31 M.L.T. 50 (P.C.)=(1922) M.W.N. 486=4 U.P.L.R. (P.C.) 64=3 P.L.R. (P.C.) (1922)=3 Pat. L.T. 363=49 I.A. 228=(1922) P.C. 247 (P.C.).**

———*Alienation—Father—Mortgage—Necessity—High rate of interest—Immorality—Onus of proof—Mortgage not for necessity—Liability of share of mortgagor.*

Under the Hindu Law the sons challenging mortgages effected by their father on the ground of immorality must prove that the money was borrowed for immoral purposes. The legal necessity for the loan as well as for the high rate of interest stipulated for is to be proved by the plaintiff mortgagee in the absence of proof of which the rate cannot stand. Where the mortgagee fails to prove justifying necessity, no decree can be passed even against the manager mortgagor as the transaction is altogether void. (*Lord Phillimore*, J.) MANA LAL *v.* KARRU SINGH. **56 I.C. 766=1 Pat. L.T. 6 (P.C.)**

———*Alienation—Father—Setting aside—Son's suit to set aside—Mesne profits—Conditional decree.*

The possession of a transferee from a Hindu father under a sale deed which was set aside on condition of the son's paying a certain sum of money to the vendee (representing the antecedent debts binding on the son) could not be said to be unlawful while the deed stood and no mesne profits could be awarded against him. (*Lord Phillimore.*) BANWARI LAL *v.* MAHESH. **41 All. 63=49 I.C. 840=21 O.C. 328=23 C.W.N. 577=6 O.L.J. 163=(1919) M.W.N. 490=455 I.A. 284 (P.C.).**

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———*Alienation—Father—Decree against—Sale of right and interest of father in execution—Right acquired by purchaser—Son's interest in property if and when will pass.*

The rules that a sale of family property in execution of a decree obtained against a Hindu father for debts which are neither illegal nor immoral involves the sale of the interest of his son or sons, therein does not always apply. The creditor's conduct for example may evidence his intention not to proceed against the interest of the son or sons. This is peculiarly so where the form of his proceedings point to an election to seek execution against his own debtor's interest and no further. Where the certificate of sale recited that the decree-holder has bought "the right and interest of the judgment-debtor (the father) to be allotted by division". *Held* that there was strong indication of an intention to proceed against the father's interest only. (*Lord Sumner*) RADHA KRISHNA CHANDERJI *v.* RAM BAHADUR. **16 A.L.J. 33=43 I.C. 268=23 M.L.T. 26=4 P.L.W. 9=34 M.L.J. 97=7 L.W. 149=22 C.W.N. 330=27 C.L.J. 191=(1918) M.W.N. 163=20 Bom. L.R. 803 (P.C.).**

———*Alienation—Father—Necessity, absence of—Sons, whether bound.*

The joint property of a Mitakshara Hindu family cannot be alienated as against co-sharers by way of mortgage or otherwise except for necessity, or for the payment of an antecedent debt, quite distinct from the debt, incurred in the mortgage itself, and the sons of the mortgagor are not bound by any such alienation and there is no pious obligation to pay any such debt. (*Viscount Haldane*) JOGI DAS *v.* GANGA RAM. **21 C.W.N. 957=42 I.C. 791=(1917) M.W.N. 739 (P.C.)**

———*Alienation—Father—Decree against—Execution sale—Son's interest passes—Debt not immoral or illegal—Sale of right, title and interest.*

Under the Mitakshara Law a judgment against the father alone can always be executed against the whole joint family property except where the debt in respect of which the judgment was obtained was incurred for illegal or immoral purposes. The words "right, title and interest of the judgment debtor (father)," in the sale certificate do not necessarily import that when the father is the judgment-debtor, nothing but his share of the joint family property is sold. There is no reason why the execution creditor should be deprived of his undoubted rights by such a narrow construction. In cases of this kind the substance and not the technicalities of the transaction should be regarded. Having regarded to the conduct of the sons in the case and to the price paid by the execution creditor, who purchased the property, it was held that the intention was to sell the whole property including the interest of the

sons. 14 I.A. 77; 17 I.A. 11 Ref. to (*Lord Buckmaster.*) SRIPAL SINGH *v.* PRODYOT KUMAR. **41 Cal. 524=44 I.A. 1=32 M.L.J. 133=18 A.L.J. 147=(1917) M.W.N. 193=21 C.W.N. 442=26 C.L.J. 220=21 M.L.T. 222=39 I.C. 252=19 Bom. L.R. 290 (P.C.).**

———*Alienation—Father—Necessity—Antecedent debts—What are.*

Under the Mitakshara Law the joint family property, which is owned by all the members of the family, as co-parceners, cannot be the subject of a gift, a sale or mortgage except with the consent, express or implied, of all the other co-parceners. The father as manager and head of the family can sell or mortgage the property so as to bind his sons, for family or estate necessity. The principle in regard to this is analogous to the power vested in the head of a religious endowment or mutt or in the guardian of an infant. The father can also validly alienate the joint family property to discharge a debt which was really antecedent to the alienation (*i.e.*) which was incurred wholly apart from the security of the joint family property and which is not proved to have been incurred for immoral purposes. The doctrine of *onus probandi* in cases where legal necessity is urged, is based largely upon the necessity of protecting the rights of third persons. Where a mortgagee sued on a mortgage granted 27 years before at an exhorbitant rate of interest, and nothing had been done in the interval, the onus of proving its binding nature as against the sons was rightly laid on the mortgagee. 6 M.I.A. 393. Ref. (*Lord Shaw*) SAHU RAM CHANDRA *v.* BHUP SINGH. **39 All. 437=44 I.A. 126=21 C.W.N. 698=1 P.L.W. 557=15 A.L.J. 437=19 Bom. L.R. 498=26 C.L.J. 1=33 M.L.J. 14=(1917) M.W.N. 439=32 M.L.T. 22=39 I.C. 280=6 L.W. 213 (P.C.)**

———*Alienation—Father—Setting aside—Suit by son for recovery of property—Limitation—Form of decree—Equities—Rights of sons subsequently born.*

A Mitakshara father became solely entitled to the ancestral properties by survivorship but allowed his uncle's widow to adopt a son and subsequently put the adopted son in possession of specific family properties. The sons, the eldest of whom was born before the alienations brought a suit questioning the validity of the adoption and the allotment to the adopted son and for recovery of the properties so alienated. *Held*, that it was in substance a suit to set aside the father's alienation under Art. 126 of the Lim. Act treating the adopted son as a stranger, that the eldest son having been born at the date of alienation and attained majority within three years of suit could sue not only on his own behalf but on behalf of subsequently born son who would be entitled to share in the relief if the eldest son succeeded in the suit; that the son was not bound to ask for a partition of the family properties but could sue for annulment of the alienation and joint enjoyment

of the properties with the father; but that it was competent to the Court to make the whole or any part of the relief granted in the suit to the sons conditional on their assenting to a partition, so far as their father's interest in the estate, so as to give effect to any rights to which the adopted son might have against the father. (*Sir Samuel Griffith*) RAMKISHORE KADARNATH *v.* JAINARAYAN RAMRACHPAL. **40 Cal. 966=(1913) M.W.N. 661=14 M.L.T. 163=17 C.W.N. 1189=18 C.L.J. 237=15 Bom. L.R. 867=11 A.L.J. 865=25 M.L.J. 512=10 N.L.R. 1=20 I.C. 958=40 I.A. 213 (P.C.).**

———*Alienation—Father—Small portion of consideration not binding—Sale must be upheld—Necessity—Onus of proof—Effect of pre-emption.*

If, in a suit by a son challenging his father's alienation, on the ground that the consideration is not binding, the Court finds that the amount of the consideration, for which legal necessity has not been established, is trifling and can be overlooked, the sale must be upheldy but otherwise it must be set aside. The Court should also see if the amount covered by legal necessity could have been raised without the alienation in question. The onus of proving legal necessity or inquiry enough to satisfy a prudent man that the necessity did exist, lies on the creditor in the first instance, in a suit, questioning an alienation by the father of a joint Hindu family, brought by the son; and that the onus is not affected by the fact that a pre-emption has taken place and that it is the pre-emptor himself against whom the relief is claimed. (*Daniels*, J.) CHANDRIKA SINGH *v.* BHAGWAT SINGH. **4 L.R.A. (Civ.) 545=1924 All. 170.**

———*Alienation—Father—Mortgage by—Public auction-sale—Rights of parties.*

Where joint family property went either under a conveyance executed by the father in consideration of an antecedent debt or a sale in execution of a decree against the father, the sons cannot recover the property so long as they do not show that the debts were contracted for immoral purposes and the purchasers had notice of the same. Where the sale was a public auction-sale and the sons could safeguard their rights if they had taken steps in time, they cannot afterwards question the rights of the purchaser by challenging the validity of the original mortgage executed by their father. (*Kanhaiya Lal*, J.) JADUBIR *v.* GAJADHAR. **21 A.L.J. 809=5 L.R.A. (Civ.) 53=1924 All. 169.**

———*Alienation—Father—Necessity—Onus—Antecedent debt—Suit by son to set aside alienation.*

To lay down a general proposition of law that in every case where a Hindu son brings a suit to recover possession of properties from the transferees from his father the burden lies on him to prove that the transfer was without an

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legal necessity, is not quite accurate. Of course in every case the burden *prima facie* lies on the plaintiff to establish his case; but where it is either admitted or proved that the plaintiff was the member of the joint Hindu family the property transferred was an ancestral property, that it had been transferred without the plaintiff's consent and not apparently in lieu of any antecedent debt or at an auction-sale, the burden would lie on the defendent transferee to justify the alienation. (*Lindsay and Sulaiman, JJ*) BAIJNATH RAI *v* GOKUL RAI. **45 A 718 = 21 A L.J. 659 = L.R. 4 A. 598 = 1924 All. 37.**

———*Alienation—Father — Son's rights—Auction-sale.*

It is only when joint family property has passed out on account of an antecedent debt or sold by public auction that the sons cannot challenge the alienation unless they show the debt was tainted with immorality. Where the sale is not at a public auction, the alienee has to justify the alienation by showing antecedent debt or legal necessity. (*Lindsay and Sulaiman, JJ*) SAHEB SINGH *v.* GIRDHARI LAL. **45 A. 576 = L R 4 A. 284 = 1924 All. 24.**

———*Alienation—Father— Necessity—Pressure—Existence of debts*

In order to justify an alienation made by the father of a joint Hindu family it is not sufficient in law to show that at the time of the alienation debts binding on the family were outstanding. It must be further shown that the alienation had to be undertaken under the pressure of a present necessity for the discharge of the debts. The power of the father to charge the estate can only be exercised rightly in case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded. These observations apply to a mortgage as well as a sale. (*Rafique and Lindsay, JJ.*) BANDHU RAM *v* RAM KISHUN SONAR. **21 A L.J. 354 = L. R. 4 A. 406 = 1923 All. 535.**

———*Alienation—Father—Suit by son to set aside—Form of decree—Consideration partly binding*

Where a Hindu son sues to set aside an alienation of ancestral property made by his father on the ground that it is not binding upon him and the Court finds that out of the sale consideration, a portion was not required for family necessity the plaintiff would be entitled to a decree for possession subject to his re-imbursing the purchaser to the extent to which the sale was a valid sale. The form of decree in a case of this kind should, therefore, be a decree for possession in favour of the plaintiff subject to his paying to the purchaser so much of the consideration as was required for the necessity of the family. (*Mears, C J. and Banerji, J.*) DWARKA RAM *v.* JHULAI PANDE. **45 A. 429 = 9, O & A.L.R. 494 = 1923 All. 248.**

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———*Alienation — Father — Execution of mortgage by all adult members.*

All the adult members of a joint Hindu family joined in executing a mortgage reciting necessity for the loan. Twelve years later some of the surviving executants of the mortgage and the widow of another executant renewed the mortgage, the consideration for the mortgage being the original mortgage-deed. In the interval between the first and the second mortgage, several sons had been born to the executants of the mortgage. *Held*, that the sons who had been born subsequently to the first deed of mortgage could not question the binding character of the transaction, 33 A, 283 44 A. 193, Ref. (*Mears, C. J. and Piggott, J.*) PARTAB SINGH *v.* BOHRA NATH. **45 All. 49 = 1923 All. 197.**

———*Alienation—Father—After born son—Right to set aside alienation.*

A mortgage of joint family property was made by a Hindu father without the consent of his only son who shortly after brought a suit for a declaration that the mortgage was not binding on the family property. Prior to the decision of this suit, another son was born.

Held, in proceedings by the mortgagees to enforce their rights under the mortgage that as the alienation was made by the father without the consent of the son then alive, who also promptly challenged it, the after-born son was also entitled to contest the validity of the mortgage; also that his interests were quite separate from those of his elder brother and hence he was not bound by the decision in the prior suit. (*Rafique and Lindsay, JJ.*) BHUP KUAR *v.* BALBIR SAHAI. **44 A. 190 = 19 A. L. J. 978 = 1922 All. 342.**

———*Alienation—Father—Gift to idol.*

A gift by a father of a small portion of the family property in favour of an idol for pious religious purposes is valid though not made "during season of distress." (*Mears, C.J. and Banerji, J.*) THAKURJI *v.* NAND AHIR, **43 All. 560 = 19 A.L J. 530 = 63 I C. 546 = 3 U P.L R. (A) 75.**

———*Alienation—Father— Consideration—Small part, for legal necessity—Effect of.*

In a suit by a son to set aside an alienation by the father of joint family property, where only as small portion of the consideration is found for legal necessity, the sale could be set aside on payment to the vendee of the small sum and the vendee has no charge upon even the alienor's share, for the rest of the consideration. (*Lindsay and Kanhaiyalal, JJ.*) RAM SAHAI *v.* PARBHU DAYAL. **63 I C. 358 = 19 A.L.J. 687.**

———*Alienation—Father—Necessity, burden of proof.*

A father as manager has no general right to sell or mortgage joint family property though the money raised by it is used by him for some profitable business. The person seeking to

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support such disposition must prove the necessity for it. (*Piggott and Gokul Prasad*, JJ.) GANGA PRASAD *v.* RAM SARUP. **60 I.C. 68.**

——*Alienation—Father—Antecedent debts—Son's liability.*

An alienation of a joint ancestral property by a Hindu father to satisfy an antecedent debt binding on him and which would be son's pious duty to pay is binding on the son. (*Piggott and Walsh*, JJ.) MAN SINGH *v.* GAINI. **40 All. 77=43 I.C. 62=15 A.L.J. 860.**

——*Alienation — Father—Legal necessity—Improvements effected by vendee—Sale set aside by sons—Form of decree.*

Taking a mortgage by selling family property is not for the benefit of the family and the alienor's sons were held entitled to the property along with inseparable improvements in the house but without costs of suit. (*Banerjee and Ryves*, JJ.) CHARANJI LAL *v.* GANGA RAM. **42 I.C. 670=15 A.L.J 763.**

——*Alienation—Father — Setting aside—Sale not for antecedent debt or for necessity Son's rights—Decree directing refund.*

A Hindu father's sale of family property not for an antecedent debt or for legal necessity entitled sons to recover the property without paying back the amount paid by the purchaser to the father, since it cannot be regarded as a debt of the father until the sale has been set aside. 11 Cal. 396, Diss. (*Banerjee and Piggott*, JJ.) MADAN GOPAL *v.* SATI PRASAD. **39 All. 483=40 I.C. 451=15 A.L.J. 425.**

——*Alienation — Father — Interest — Burden of proof.*

A Hindu father executed a mortgage of family property, bearing interest at 18 per cent with six monthly rests in lieu of a common pro-note carrying interest at 6 per cent. *Held*, (Per *Walsh*, J.) Courts ought to apply the strict law and that the rate of interest should not be reduced on the ground that the rate charged is in itself an evidence of undue influence or fraud. *Held*, (Per *Sunder Lal*, J.) that it was for the creditor to show that it was necessary to borrow the money at an exorbitant rate of interest. (*Walsh and Sundar Lal*, JJ.) PADAM SINGH *v* RAM RUP. **36 I.C. 217=14 A.L.J. 772.**

——*Alienation—Father— Setting aside—Rights of purchaser—Mesne profits.*

Where a sale made by a father and manager of a joint Hindu family without legal necessity is repudiated and set aside by his sons by a suit, the purchaser is liable for mesne profits from the date of the suit as he holds and continues in possession at his own risk from that date. The institution of the suit is a repudiation of the sale. (*Walsh and Sundar Lal*, JJ.) BHIRGEE NATH *v.* NARSING TEWARI. **39 All. 61=35 I.C. 478=14 A.L.J. 1161.**

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——*Alienation—Father—Setting aside—Subsequent born son.*

A Hindu having a minor son alienated properties and the son did not take steps to set aside alienations within three years of his attaining majority. *Held*, that the sons born to the latter after his claim was barred had no right to dispute the sale by the grandfather as the property ceased to be joint family property at the time of their birth. (*Banerjee and Walsh*, JJ.) LACHMI NARAIN PRASAD *v.* KISHAN KISHORE CHAND. **38 All. 126=33 I.C. 913=14 A.L.J. 25.**

——*Alienation—Father—Consent of son—Attestation.*

If there is no legal necessity for the sale by a Hindu father the son could contest the alienation. Though the powers of a Hindu father as manager of the joint family were extensive, they did not extend to the alienation of joint ancestral family property otherwise than for legal necessity It is doubtful whether consent could be rightly inferred from mere attestation in the absence of other evidence. (*Piggott*, J.) PACHKAURI RAUT *v* RAM KHELAWAN CHAUBE. **29 I.C. 749.**

——*Alienation—Father—Son in mother's womb, if can contest.*

A son in his mother's womb is competent to contest an alienation made by his father while he was in the womb. 16 Mad. 76; 27 M.L.J. 580, Foll.; (1869) W.R 340, Not foll, 11 W.R. 11 (P.C.), Ref. to, (*Richards*, C.J. *and Banerjee*, J.) DEO NARAYAN SINGH *v* GANGA PRASAD. **37 All 162=26 I.C. 871=13 A.L.J. 69.**

——*Alienation—Father—Setting aside—Estoppel.*

Where joint family property is mortgaged by one co-parcener his sons are estopped from urging that the property did not belong solely to mortgagor. (*Banerjee and Chamier*, JJ.) SHIAM SUNDER *v.* BUDDHU LAL. **24 I.C 252=12 A.L.J 794.**

——*Alienation— Father — Necessity—Decree on mortgage—Death of father.*

Where a Hindu father mortgaged a portion of the family property and the mortgagee obtained a decree on the mortgage, and the father died subsequent thereto, *held*, that not even the father's share could be sold in execution of the decree, 31 All, 176, Foll. (*Piggott*, J). ALI AHMAD *v.* SOHANLAL. **24 I.C. 6=12 A.L.J. 613.**

——*Alienation—Father—Setting aside—Sons entitled to set aside—Part of consideration—Terms of decree*

A son in a joint Hindu family can ask for the setting aside of an alienation made by the father unless the consideration for the alienation is an antecedent debt or the debt was incurred for legal necessity, but in such cases the alienation can be set aside on payment of such part of the consideration as was for antecedent debt. (*Rafique and Piggott*, JJ.) RAM DYAL *v.* SURAJ MAL. **23 I.C. 891.**

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———*Alienation—Father—Setting aside—After-born son.*

An after-born son of a Hindu cannot challenge a mortgage executed before his birth as having been incurred for immoral purposes. (*Richard and Piggott*, JJ.) NARAYAN DAS v. HARDIAL. **35 All. 571=21 I.C 830=11 A L J. 941.**

———*Alienation—Father—Legal necessity—Who can avoid sale—Rights of purchaser of share.*

An auction-purchaser of the right of the father alone in joint family property mortgaged by the father is not entitled to raise the plea of want of legal necessity so long as there are sons to challenge his purchase. 11 I.C. 220, Dist. (*Griffin and Chamier*, JJ.) BAKHSHI RAM v. UDILADHAR. **35 All. 353=21 I.C. 619=11 A.L J. 371.**

———*Alienation—Father—Mortgagee of the family—Duty of.*

The mortgagee of a joint Hindu family is bound to inquire into and satisfy himself as to the legal necessity of the loan, cannot simply rest satisfied on the mere statement of the mortgagor that there were antecedent debts for which the money was borrowed. (*Lyle*, J.) TRIBENI PRASAD v. RAM NARAIN. **20 I.C. 951=11 A.L.J. 713.**

———*Alienation—Father — Consent—Presumption.*

In the absence of any evidence either way, consent of a co-parcener to a mortgage by his father might be presumed from long inaction with knowledge of the mortgage till the mortgagee sues on it. 33 All. 283, Foll. (*Karamat Husain and Chamier*, JJ.) KAMTA PRASAD SINGH v. SIDH NARAIN SINGH. **14 I.C. 251.**

———*Alienation—Father—Sale in execution of decree—Sons not parties—Son's right to redeem.*

Per *Karamat Husain*, J. *Chamier*, J.) dissenting.) In execution of a decree obtained on a mortgage executed by a Hindu father which is binding on the sons, the joint family property was brought to sale. *Held*, the sons who were not parties to the suit are entitled to redeem it, for, though the private sale by a father and a Court-sale by auction is binding on the sons owing to the pious duty to pay the father's debt, yet the auction-sale cannot extinguish the right of redemption. (*Karamat Husain and Chamier*, JJ.) BAL DEO SINGH v. HIRA LAL. **13 I.C. 951=9 A L J. 67.**

———*Alienation—Father — Interest—High rate—Burden of proof—Creditor—Delay in suit.*

It is for the creditor suing on a mortgage by an ancestor, the defendants (his descendants) to prove that there was necessity for borrowing at the high rate stipulated in the bond and if he fails to show the necessity, the Court can reduce the rate especially when the suit is filed after a long time. (*Richards*, C.J. *and Banerjee*, J.) NANDRAM v. BHUPAL SINGH. **34 All. 126=13 I.C. 5=8 A.L.J. 1294.**

———*Alienation—Father—Liability of sons.*

Sons of a father in joint family are bound by their father's alienation effected to pay off antecedent and not immoral debts. They cannot impeach it saying that they were not parties to it. (*Knox and Piggott*, JJ.) SHEO DAYAL v. JAGANNATH. **12 I.C. 111=8 A.L J. 922.**

———*Alienation—Father — Antecedent debt—Family necessity—Liability of sons.*

Where a mortgage is executed by the father in lieu of an antecedent debt it binds the sons and it is not necessary to prove that the antecedent debt was for family necessity. If the debt in lieu of which the mortgage was executed is a debt which is not for the first time incurred at the time of the mortgage but a debt which existed prior to and independently of such mortgage and was *bona fide* debt, that is, was not a debt colourably incurred for the purpose of forming the basis of a subsequent mortgage or other similar subject, that would be an antecedent debt sufficient to bind his sons and grandsons. Evidence of general immorality and extravagance is not sufficient to enable a son of his pious liability to pay his father's debt unless he could show that the debt was incurred for an immoral purpose. (*Richards*, C.J. *and Banerjee*, J.) BHAGAWATI PRASAD v. GANGA PRASAD. **11 I.C. 930=8 A.L J. 649.**

———*Alienation—Father — Necessity — Inquiry.*

A father of a Hindu joint family governed by Mitakshara cannot execute a mortgage of the joint family property so as to bind his sons where the loan is not obtained for the family necessity, or to meet an antecedent debt. 31 All. 176, Ref. The mere payment of previous debt is not a sufficient inquiry within the rule in 18 W R 81. (*Karamat Husain and Chamier*, JJ.) BARAN DEO RAI v. RUP NARAIN. **11 I.C. 651.**

———*Alienation—Father—Antecedent debt—Liability of sons.*

A debt due at one time by the father of a joint family but which is time barred is not an antecedent debt and if the father executes a mortgage in consideration of such debt the mortgage does not bind his sons. (*Knox and Piggott*, JJ.) INDAR SINGH v. SARJU SINGH. **11 I.C. 737=8 A.L J. 1099.**

———*Alienation—Father — Setting aside—Right of after-born son.*

If the adult co-parceners do not consent to alienation by the father, an after-born co-parcener can impeach such alienation. (*Richards*, C.J. *and Banerjee*, J.) TULSI RAM v BABU LAL. **33 All. 651=10 I C. 908=8 A.L.J. 733.**

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———*Alienation—Father—Antecedent debts—Liability of son's share.*

A mortgage by father of whole joint property is binding it for antecedent debts as against the the son's share in the hands of his widow. (*Karamat Hussain*, J.) SOHINI *v.* MOHAN KUAR. **10 I.C. 228.**

———*Alienation—Father — Necessity—Antecedent debt.*

In a suit upon mortgage by an ancestor the mortgagees have only to prove that there was an antecedent debt of the ancestor existing at the date of execution of the mortgage but not the nature of the debt. (*Stanley*, C.J. *and Banerjee*, J.) DHARAJIT *v.* SIRIA. **9 I.C. 484**

———*Alienation—Father—Decree against—Execution sale—Effect on son's interest.*

The sale of a certain joint family properties in execution of a decree against the father does not pass the son's share in the property sold. (*Batchelor*, C.J. *and Kemp*, J.) HANMANDOSS RAM DYAL *v.* VALABHADAS SHANKARDOSS. **43 Bom. 17=46 I.C. 133=20 Bom. L.R. 472**

———*Alienation — Father — Necessity — Time-barred debts—Antecedent debt.*

An alienation to pay a time-barred antecedent debt, does not bind existing son. The alienee can proceed against the father's share as it was at the date of alienation. After born sons do not decrease this share. (*Scott*, C.J. *and Heaton*, J.) NAKO GOPAL KULKARNI *v.* PARAGOWDA BASA GOWDA. **41 Bom. 347=39 I.C. 23=19 Bom. L.R. 69.**

———*Alienation—Father—Sale in execution—What passes.*

There is no rule whether of Hindu or any other law that a person who advisedly buys a fraction of an estate has good title to the whole. If the Court intended to sell more than what might have been sold, no more can pass to the purchaser than what was in fact offered for sale. Where in the conditions of sale a clause is inserted that the interest of the sons is sold in execution in pursuance of Bombay Civil Circular No. 96 R. 15 (1), the interest of the sons does not pass to the purchaser. (*Batchelor and Shah* JJ.) TIMMAPAN DEVARBHATTA *v.* NAR SINGH TIMMAYYA HEBAR. **37 Bom. 631=21 I.C. 123=15 Bom. L.R 794**

———*Alienation — Father—Debts—Execution sale.*

A decree for a personal debt of the father which is not for immoral or illegal purposes may be executed by sale of the whole family estate in his lifetime. (*Scott*, C.J. *and Batchelor*, J.) DATTATRAYA VISHNU *v.* VISHNU NARAYAN. **36 Bom. 68=12 I.C. 949=13 Bom. L.R. 1161.**

———*Alienation—Father—Family necessity.*

Family necessity is an expression that must receive a reasonable construction. A reasonable latitude, too, must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so as to free the person dealing with him from the need of all precautions when a minor son has an interest in the property. (*Richardson and Huda*, JJ.) MUKTI PROKASH NANDE *v.* ISWARI DEI DEBI **37 I.C. 853=21 C.W.N. 938.**

———*Alienation—Father — Decree against father—Suit to set aside.*

In a suit to set aside a sale in execution of a decree against a father, it is open to the plff. to go behind the decree and show the nature of the debt. (*Sanderson*, C.J. *and Mookerjee*, J.) SANT PRASAD SINGH *v.* HARI SINGH. **38 I.C. 161.**

———*Alienation — Father — Setting aside—After-born son.*

An alienation by a Mitakshara father without necessity and without the consent of sons then living would be invalid not only against the latter but also against any after-born son and no consent or ratification by the former after the birth of the latter is binding upon the latter. (*Mookerjee and Beadon*, JJ.) HAZARIMALL *v.* ABANI NATH. **17 C.L.J. 38=18 I.C. 625=17 C.W.N. 280.**

———*Alienation—Father—Rights of alienee.*

Where on the one hand legal necessity is not proved nor on the other that the debt was for illegal or immoral purposes the mortgagee would be entitled to a decree directing the debt to be raised out of the whole ancestral property. (*Jenkins*, C.J., *and Chatterjee*, J.) BISSOMOTH PRASAD MATITA *v.* BRINDESRI PRASAD SINGH. **40 Cal. 342=17 I.C. 677=17 C.W.N. 1025.**

———*Alienation—Father—Consideration — Small portion not for necessity—Suit by sons to set aside sale.*

Where the sons of a Hindu father sued to set aside alienations of the family property made by him and it was found that a small portion of the consideration was not a family necessity, *held* that the sales ought not to be set aside as being unnecessary unless it can be proved or reasonably presumed that the sale of a lesser area for the exact amount required for necessity was feasible. (*Martineau and Brasher*, JJ.) GOKHARAM *v.* SHAM LAL. **3 Lah 426=1933 Lah. 268.**

———*Alienation—Father—Legal necessity—Son's right to impeach.*

In the absence of a finding that a father has been recklessly extravagant, or wantonly wasting his property, the vendee of the property from the father is not required to prove that the previous debts were contracted for necessary purposes; he has only to prove their existence. The son cannot impeach such a sale. (*Martineau*, J.) JAGAT SINGH *v.* GANDA SINGH. **1922 Lah. 301.**

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———*Alienation—Father—Suit by sons to set aside.*

In a suit by a Hindu son to set aside alienations of joint family property by his father, if it is found that the sales are not valid and binding on the family, the plff. would be entitled to a decree that his rights as co-parcener are not affected by the alienation. The decree in favour of the plff. should not be made conditional on his refunding his share of the purchase-money. 39 A. 43 ; 30 A 352 : 53 P.R. 1901, rel.; 11 C. 396, Not foll (*Le-Rossignol and Campbell*, JJ.) BADAM *v.* MADHO RAM.
2 Lah. 338=1922 Lah. 241.

———*Alienation—Father—Son's suit to set aside—Form of relief.*

A Hindu son is entitled to set aside an alienation by his father of ancestral property which has not been affected for the payment of an antecedent debt or for any family necessity, 53 P.R. 1901 ; 28 A 328 ; 39 A. 485, Ref. In a suit for possession of the properties so alienated the son is not bound to refund the purchase-money but can claim possession of the property. 11 C. 396 ; 32 I.C. 891 Ref. (*Broadway and Martineau*, JJ.) KALI CHARAN *v.* JAGGU.
67 I C 89.

———*Alienation—Father.*

In the case of sale by father for necessity, sons are not entitled to pre-empt. (*Scott Smith*, J.) SUKHA RAM *v.* KOTU RAM. **67 I.C 76.**

———*Alienation — Father — Necessity— Burden of proof.*

A vendee from the father, in a joint Hindu family must, as against the sons, make out legal necessity as to that part of the consideration which is not in the nature of antecedent debts. Legal necessity and family benefit must be proved positively and cannot be assumed. (*Abdul Raoof and Harrison*, JJ.) LAIK SHAH *v.* DINA NATH. **63 I.C 515.**

———*Alienation—Father—After-born son—Suit by.*

Under the Hindu Law, a son conceived is the same as a son born and if he is born alive, he has a right to challenge alienations and other acts affecting his rights in the joint family property. (*Chevis and Scott-Smith*, JJ) DWARAKA DAS *v* KRISHNAN KISHORE.
2 Lah. 114=61 I.C. 628=3 Lah. L J. 349.

———*Alienation — Father — Necessity— Antecedent debt.*

Alienation by father is binding on the sons. If the alienation is (1) for family necessity or (2) to discharge an antecedent debt. Such antecedent debts must be real and not a cover for a breach of trust. (*Scott-Smith*, J.) LAJJA RAM *v.* NARINJAN LAL. **45 I C. 989= 101 P.W R. 1918.**

———*Alienation—Father—Debt—Proof of immorality.*

Each item of the consideration need not be proved to have been spent on immoral purposes when it is shown that the alienor at the time of mortgage was indulging in drinking, prostitution and debauchery, and was without any business or occupation upon which the money might legitimately have been spent. 50 P.R. 1913, Foll (*Shah Din and Le-Rossignol*, JJ.) KISHEN SINGH *v.* BHAGWANDAS.
31 I.C. 476=98 P.R. 1913.

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———*Alienation—Father—Suit by minor sons—Good faith.*

Where in a suit by the minor sons for a declaration that the sale of ancestral property by their father shall not affect their reversionary right after his death, it appeared that the alienor was in need of money for household necessities and took the money in good faith : *Held*, that the question of valid necessity was one of fact in the case and its necessity being proved, the plaintiff's suit must fail. (*Johnstone*, C.J. *and Rattigan*, J.) RAJA *v.* ALLAH DITTA,
112 P W R. 1915=110 P.R. 1915= 29 I.C. 802 (1)=37 P L.R. 1916.

———*Alienation—Father—Necessity—Careless management—Absence of immoral purpose—Sons bound.*

Where plff. sues his father a Zemindar and an alienee from him for a declaration that the alienation would not bind him, the Court should not expect exceptionally careful management or thrift. It should simply see whether there has been wanton waste or reckless extravagance. (*Johnstone*, J.) BUDH SINGH *v.* BIR LAL. **25 P L.R. 1911=9 I.C. 844= 40 P.W.R. 1911.**

———*Alienation—Father—Necessity.*

Where a father transfers property describing it as his self-acquisition and it is found that the recital was incorrect but that there was necessity of justifying the alienation can be upheld. 34 A. 296 P. C., Dist.; 28 I. C. 365, Ref. (*Spencer and Devadoss*, JJ.) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR. (1923) **M.W.N. 57(2) =16 L.W. 936=1923 Mad. 262.**

———*Alienation—Father—Setting aside—Mesne profits—Liability for.*

In the case of a sale by a father or managing member of a joint Hindu family for alleged necessity, the sale would be good till avoided because it is open to the other co-parceners to affirm the transaction. Consequently in a suit by a co-parcener to set aside the alienation, the plff. will not be entitled to mesne profits before the suit in the absence of a repudiation of the sale before that date. (*Kumaraswami Sastri and Devadoss*, JJ.) SUBBA GOUNDAN *v.* KRISHNAMACHARI. **43 Mad 449= 42 M.L J. 372=30 M L T. 217=15 L.W. 537= (1922) M W.N. 269=1922 Mad. 112.**

———*Alienation—Father—Suit by son for partition against father and father's alienee—Alienation held not binding on son—Form of decree to be given to the son.*

If in a suit for the partition by a son against his father and an alienee from the father the

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Court holds the alienation not to be binding on the son, the son is entitled to get a decree for his share in the family properties without any condition being imposed on him to refund the consideration paid by the alienee to the father, 39 All. 37; 11 Cal. 396, not foll. Per *Seshagiri Aiyar*, J.—A son is bound to pay only such debt of his father as exist while they are joint; and the son getting a decree for partition becomes divided from his father as from the date of the suit for partition. Any liability of the father to refund the consideration to the alienee arising as the result of the decree for partition is a liability for unliquidated damages and not a debt, and even if it becomes a judgment-debt it is not a debt on the date of a suit for partition. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SRINIVASA AIYANGAR *v.* KUPPUSWAMI AIYANGAR. **44 Mad. 801 = (1921) M.W.N. 630 = 64 I.C. 698 = 14 L.W. 78.**

———*Alienation—Father—Validity.*

An alienation by the father of the whole of the family property for the purpose of extricating a divided member out of his financial difficulties or because the property was difficult to manage, is not valid. (*Sadasiva Aiyar and Coutts Trotter*, JJ.) DORASWAMI AIYAR *v.* SESHADRI VENKATRAMA AIYAR.
63 I.C. 228 = 13 L.W. 618.

———*Alienation—Father—Not binding on family—Suit by sons for recovery of their share—Purchaser if entitled to charge for any portion of consideration—Prior suit by father for setting aside sale*—Res judicata.

In a suit by the sons for the recovery of their share in joint family property sold by their father for purposes found not to be binding on the family, the purchaser is not entitled to any charge on the sons' share for any portion of the consideration paid by him. The suit is not barred by *res judicata* by reason of the dismissal of a suit by the father for setting aside the sale on the ground for fraud, undue influence and want of consideration. The purchaser cannot treat the consideration which he seeks to get refunded as a debt of the father which it is the duty of the sons to pay. 14 M.L.T. 537; 39 A.L.J. 37; 41 Mad. 136, Rel. (*Abdur Rahim and Napier*, JJ.) KILLARU KOTTAYA *v.* POLAVARAPPU DURGAYYA.
47 I.C. 192 = 35 M.L.J. 451.

———*Alienation—Father—Son's suit to set aside—Counter-claim by vendee in respect of portion.*

In a suit by Hindu son for a declaration that an alienation of family property made by his father is invalid so far as his share is concerned, the Court cannot pass a decree against him for payment to the vendee of the share of the consideration found to be not necessary, treating it as damages payable to the vendee by the father for failure of consideration. The cause of action for recovering the portion of consideration found to be not necessary or beneficial arises only after the date of the decree in this suit and therefore no counter-claim to recover

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that amount can strictly be raised or considered in the son's suit. (*Sadasiva Iyer and Spencer*, JJ.) MUTHU KRISHNA NAIDU *v.* KANOJA.
39 I.C. 501 = (1917) M.W.N. 273.

———*Alienation—Father—Setting aside—By sons to the extent of their share—Alienee's rights*—Res judicata—*C. P. Code, S. 52.*

A sale of family properties by a Hindu father was after his death set aside in a suit by the sons to the extent of their share and the alienee afterwards sued the sons to recover the proportionate share of the consideration. It was held that the alienee's claim was not barred though he did not agitate it in the previous suit and that he could recover the amount from the assets in the hands of the sons and from their own joint family properties. (*Seshagiri Aiyar and Napier*, JJ.) RAMAN PANDITHAN *v.* SATHA KUDUMBAN.
31 M.L.J. 502 = 20 M.L.T. 320 = (1916) 2 M.W.N. 217 = 36 I.C. 387 = 4 L.W. 366.

———*Alienation—Father—Setting aside—After born son.*

Where a Hindu father alienates the whole of the family property belonging to himself and his son, a son born subsequently acquires no right to a share in the property and is not entitled to set aside the alienation and recover his share as there is no property held jointly. (*Sadasiva Aiyar and Moore*, JJ.) SOUNDARARAJAN *v.* SARAVANA PILLAI.
34 I.C. 794 = 30 M.L.J. 592.

———*Alienation—Father—Setting aside—Suit by son.*

A Hindu son cannot recover more than his share of the properties fraudulently transferred by his father. 20 Mad. 326, Dist. (*Sadasiva Iyer and Tyabji*, JJ.) RAMASUBBA IYER *v.* AVUDAI AMMAL.
25 I.C. 123 = (1914) M.W.N. 595.

———*Alienation—Father—Rights of alienee—After-born son—Effect.*

An alienation by a father is not determined by the birth of a son subsequent to the alienation, but the share of the other members in the remaining property will be proportionately reduced to make up the share of the after-born son. (*Wallis*, J.) GANESH ROW *v.* TULJA RAM ROW.
24 I.C. 696 = 26 M.L.J. 460.

———*Alienation—Father—Contract for sale—Specific performance.*

In a suit for specific performance of a contract, to sell family property by the father acting on behalf of his sons also it is open to the Court to grant decree against his share only. *Obiter.*—If the plaintiff expressly asks for it, a declaration of the son's liability could be made in the suit. (*Ayling and Tyabjee*, JJ.) KONDAPANENI COTTAYYA *v.* GANGARU SESHAYYA.
(1913) M.W.N. 995 = 21 I.C. 778 = 14 M.L.T. 495.

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———*Alienation—Father — Setting aside*—Onus.

The difference between the case of a son attacking a sale by the father and a co-parcener attacking a sale by the manager is one of *onus*. In the former case the son must show that the debt was inourred for illegal and immoral purposes, while, in the latter the creditor must show that the debt was incurred for proper purposes. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA *v.* MURUGAPPA.

36 Mad. 325=(1913) M.W.N. 86=12 M.L.T. 571=18 I C. 49=23 M L.J. 618.

———*Alienation — Father—Debts — Joint decree — Satisfaction by one — Liability of another's son.*

The liability of a judgment-debtor, to contribute when the decree had been satisfied by another joint judgment-debtor can be enforced against his son. 25 Mad 590, Ref. (*Wallis*, J.) DESAI NAMBERUMAL *v.* NARAINASAWMI.

9 I.C. 1023=9 M.L.T, 449.

———*Alienation — Father — Necessity — Essentials.*

An alienation by father of a family property will undoubtedly bind the son's share even in the absence of antecedent debt if there was justifying necessity. 29 Mad. 200, Dist. (*Munro and Sankaran Nair*, JJ.) VINUKONDA VEERABADRAM *v.* KONATALAPPALLI JAGANNADHA ROW.

21 M.L J. 443=9 I.C. 22=9 M.L T. 302.

———*Alienation—Father—Right to set aside—Members subsequently born.*

Where a Hindu father executes a mortgage over family property at a time when he had no son, it is not competent to the sons who are subsequently born to challenge the alienation. The subsequently born sons, take the estate as they find it at their birth and cannot impeach prior alienations by the father. (*Dhobley*, A. J.C.) JAIRAM *v.* VENKATA RAO.

5 N.L.J 66=1922 Nag. 101.

———*—Alienation—Father—Necessity.*

It is open to the sons to impeach an alienation by their father on the ground that there was no legal necessity for the alienation of their shares in the joint family property and on the ground that no portion of the debt was an antecedent debt binding on them. The sons are not merely confined to the plea that the debts of the father were incurred for immoral or illegal purposes. (*Kotwal, Dhobley and Prideaux*, A.J.Cs.) DHUDABAI *v.* NARAYAN.

5 N.L.J. 73=1922 Nag. 28.

———*—Alienation—Father—Setting aside—Right of son in womb to challenge alienation.*

A son in womb at the date of alienation has a right to challenge, the alienation on the ground of want of legal necessity or its not being binding otherwise. (*Macnair*, A.J.C.) PARASRAM *v.* LAKHMICHAND. **57 I.C. 578.**

HINDU LAW—Alienation—Father.

———*Alienation—Father— Setting aside*—Onus—*Debts—Immorality.*

To exempt the son's share in family property from liability for his father's debts the son must not only show that the debts were incurred for immoral purposes but should also establish a connection between the particular debt and the specific immoral purpose. Mere proof of extravagant or of immoral habit will not shift the onus on to the creditor. 30 All. 156 ; 28 All 508 ; 14 Bom. 320, Foll. (*Mittra*, A.J.C.) BHIKA *v.* HARLAL. **45 I C. 206.**

———*—Alienation— Father—Legal necessity —Proof.*

Necessity cannot be inferred by mere recital in the deed, that money was borrowed for private expenses and the existence of a large family of the alienor. (*Drake-Brockman*, J.C.) HIRA RAM *v.* UDHE RAM. **19 I C. 861=9 N.L.R. 74.**

———*Alienation—Father—Mortgage—Sons' liability.*

There is a distinction between the sons' liability under a mortgage executed by a father of a joint Hindu family and his remedy after proceedings taken against the father on foot of the mortgage. In the case of a joint Mitakshara family consisting of a father and minor sons, the father is necessarily the manager of the joint family, and as such, for all purposes, is a representative of the family. In the case of a joint Mitakshara family where the father, the managing member mortgaged family property for an antecedent debt and a suit was brought and decree obtained against the father, such suit and decree should be regarded as instituted and pronounced against him, in his representative capacity ; and if a son after a decree being obtained against the father, upon a mortgage executed by the father, sues to have it declared that his share is not liable to satisfy the said decree, or after a sale in execution of such a decree, sues to recover possession of his share, he cannot succeed, unless he proves that the debt was contracted for immoral or illegal purposes, or that the debt was of an illusory character. The rule as laid down in *Suraj Bansi Koer's* case is not limited to the cases in which the property had passed out of the hands of the family and gone into the hands of persons who were neither previous creditors when the sale is a private alienation nor judgment-creditors when the sale is by public auction. (*Dalal and Simpson*, A.J.Cs.) RUP KISHORE *v.* KANHAIYA LAL.

26 O. C. 266=10 O.L.J. 141=9 O & A.L.R. 384=1923 Oudh 227.

———*—Alienation — Father — Mortgage — Decree against—Suit by son to set aside—Decree on mortgage—Effect of.*

Except in cases where joint ancestral property has passed out of the joint family either under a conveyance executed by the father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt under

a sale in execution of a decree for the father's debts and in no others, the sons are not under an obligation to show that the debts represented by a mortgage executed by the father were debts which were contracted for immoral or other purposes not binding on the estate. A decree, unless it is binding on the sons, does not improve the position of the creditor any more than a sale which a father effects in order to pay a debt incurred by himself on the security of the mortgaged property. The exception to the general rule that no manager, guardian or trustee can be entitled for his own purposes to dispose of the estate, which is under his charge, cannot be extended where a liability under a mortgage merges into a decree, unless that decree can by any rule of law be held to be binding on the other members of the family. If a mortgage is not valid so far as it purports to encumber the joint family property, it cannot become a just and legal consideration, if, in the absence of the sons of the mortgagor a decree has been obtained on foot thereof against the mortgagor. Otherwise the protection intended for the junior members of the family can in that way be easily circumvented and become illusory. (*Kanhaiya Lal*, J.C.) GANGA BAKHSH SINGH *v.* RAGHUBAR SINGH. **23 O.C. 299=9 O. & A L R 339=10 O.L.J. 61=1923 Oudh 182.**

———*Alienation—Father—Mortgage without legal necessity or antecedent debt.*

A mortgage which is not binding on the estate in the father's lifetime would not be binding on the sons, for the mere circumstance of pious obligation of Hindu sons to pay their father's debts. 21 C.W.N. 957 (P.C.), Foll. (*Dalal, and Daniels* A.J.Cs.) RAM SARUP SINGH *v.* JAGESHUR SINGH. **26 O.C. 341=9 O. & A L R. 137=1923 Oudh 160.**

———*Alienation—Father.*

The existence of a pious obligation does not validate a mortgage or alienation which is otherwise invalid. (*Kanhaiya Lal*, J.C.) RAM AUTAR *v.* BENI SINGH **25 O.C. 89=1922 Oudh 135.**

———*Alienation—Father—Consideration—Major portion of, binding—Effect on transfer.*

Where a large portion of the consideration amount is borrowed for legal necessity the transfer by the manager of a joint Hindu family cannot be said to be void and the transaction, can be upheld if the transferee offers to pay up the non binding portion of the debt. 36 I.C. 57, Foll. (*Dalal*, A.J.C.) GAJADHAR BAKHSH SINGH *v.* BAIJNATH. **65 I.C. 967 (2)=8 O.L.J. 605.**

———*Alienation — Father — Son's right to recover property.*

Held, that the principle, that where ancestral property has passed out of a family under a sale-deed executed by the father, the sons cannot recover the property merely proving absence of legal necessity, applies only where the sale

under which the property has passed away was executed in lieu of antecedent debts or in execution of a decree for debt. 11 A 321; 44 I.A. 126; 6 I.A. 68 and 31 All 176, Foll. (*Daniels*, J.C.) LACHHMAN SHUKUL *v.* RAM KISHORE. **64 I.C. 220=24 O.C. 218.**

———*Alienation—Father—Son, if can recover property.*

Where joint family property goes away either by a father's alienation to pay off an antecedent debt or in execution of a decree for the father's debt, the sons, by virtue of their pious obligation to pay their father's debts, cannot recover the property. But they can do so, if they show that the debts were contracted for immoral purposes and that the purchasers had notice of such purposes. This holds good even if the father is alive. (*Kanhaiya Lal*, J.C.) RAM NIDH *v.* ISURDIN. **63 I.C. 288=24 O.C. 161.**

———*Alienation—Father—After born son.*

Whether the father is the sole co-parcener at the time of alienation, it is valid and cannot be impeached by a son born after the alienation takes place. (*Lindsay*, J.C.) KANDHAI *v.* BIBI NAWAB BEGAM. **62 I.C. 811=8 O.L.J. 285.**

———*Alienation—Father—Suit to set aside by subsequently born son—Limitation.*

The right of a subsequently born son to challenge the alienation by his ancestor on the ground of the absence of legal necessity therefor comes into existence as soon as the alienation is made and is available to any member of the joint family, who, being in existence at that time, has not been a consenting party to the alienation. Therefore limitation begins to run from the date of the alienation and inasmuch as no fresh cause of action accrues to a subsequently born son a suit by such son to challenge the alienation must be brought within the original period of limitation. (*Lindsay*, J.C.) OUDH BEHARI SINGH *v.* SURAJ BALI. **61 I.C. 801=8 O.L.J. 205.**

———*Alienation — Father — Essentials of validity.*

The elements necessary to validate an alienation are that the purpose for which the money was borrowed was necessary by law and that there was pressure on the estate sufficient to render the alienation necessary. An alienation could be upheld where if only that amount had been borrowed, which the Court finds for legal necessity, a mortgage would still have been necessary; if not the alienation should be set aside on condition that the creditor be repaid the money advanced with interest. (*Daniels*, A.J.C.) UMRAO SINGH *v.* GAYA PRASAD. **60 I.C. 647=23 O.C. 374.**

———*Alienation — Father — Reversion taking from a collateral.*

A reversioner inheriting property from a collateral gets absolute estate and his sons and grandsons cannot impeach alienations of the property made by him. A mortgage by father

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binds the family property if made for family benefit or necessity or to pay an antecedent debt. (*Stuart*, A.J.C. *and Pandit Kanhaiya-lal*, A.J.C.) BHARAT SINGH *v.* SARSRUTI SINGH. **7 O.L J. 459=60 I.C. 137=23 O.C. 241.**

———*Alienation—Father—Son's suit to set aside onus.*

Where joint family ancestral property has passed out of a joint family either under a conveyance by the father in lieu of antecedent debts or under a sale in execution of a decree for the father's debts, his sons cannot recover their property unless they show that the debts were contracted for immoral purposes and the purchasers had notice of the same. The mere fact that the purchasers were the creditors of the father does not make any difference in the application of the rule. (*Wasir Hasan*, J.C.) VASUDEO LAL *v* MAHABIR. **23 O.C. 344=39 I.C. 570=8 O L J 18=3 U P.L.R. (J.C.) 1.**

———*Alienation—Father—Inquiries—Duty of alienee—Enquiry—Extent of.*

An alienee from the father of a joint Hindu family will be protected if he makes enquiries as to the necessities of the loan and satisfies himself that the necessities represented to exist. If the necessity for the loan cannot be established by direct evidence it may be assumed if reasonable care was shown to have been taken to ascertain that it existed and that the transferee acted in good faith. 40 All. 171. (P.C.), Foll. (*Stuart and Kanhaiya Lal*, A.J. Cs.) JAI NARAIN *v.* BAJRANG BAHADUR SINGH. **7 O L.J 330=56 I C. 826=2 U.P L R. (J.C.) 116.**

———*Alienation—Father—Decree against—Sale of mortgaged property—Redemption suit by sons—Whether maintainable.*

The mortgagees purchased the property in a sale in execution of their decree against their father alone upon a mortgage by him. A suit by the sons who were not parties to the above suit was held maintainable for redemption of the mortgaged property. (*Lindsay*, J.C.) DRIGPAL SINGH *v.* SUKANANDANLAL. **7 O.L.J. 161=56 I C. 299=2 U P.L.R. (J.C.) 96.**

———*Alienation—Father—Necessity—Consent of sons—Presumption—Bulk of the consideration supported by necessity—Relief—Form of.*

The consent of the sons of a Hindu to an alienation by their father may be inferred from their failure to object at the same time to the alienation. Where there is a delay in impeaching an alienation by a Hindu father of the family property the burden of proving that the alienation was not for a legal necessity is upon those who seek to have the alienation set aside. A sale of a small portion of a joint Hindu family property to pay off a portion of a debt incurred for the purchase of acquiring new property may be justified. Where the bulk of the consideration is found to have been taken for legal necessity the sons cannot question the sale. (*Ashworth*, A.J.C.) RAM NARAIN *v.* LALTA PRASAD. **53 I.C. 664=6 O.L.J. 501.**

———*Alienation—Father—Antecedent debts—Compulsory execution by Court—Setting aside sale.*

A conveyance in consideration of an antecedent debt of a Hindu father may be enforceable during the father's lifetime. 39 All. 437, P.C. Ref.—Where the deed of conveyance would be enforceable in the father's lifetime if executed by him, the fact that the person entitled to claim thereunder got it executed by the Court under a decree would not make any difference. Where the bulk of the consideration consists of antecedent debts or is given for valid necessity so that it would have been impossible to raise the required amount except by effecting the sale in dispute, the fact that the vendor could obtain from the purchaser something over and above the amount binding upon the estate is an insufficient ground for setting aside the deed. (*Daniels and Lyle*, A J.C.) GUR SAHAI *v*, GIRDARI LAL **22 O C. 84=1 U.P.L.R. (J.C.) 54=52 I C. 75=6 O L J. 411.**

———*Alienation—Father—Antecedent debts—Debt due to alienee—Necessity.*

Where in alienation by the father of joint Hindu family the antecedent debts, to discharge which the sale was made, were owing to the alienee himself, the alienee is bound to prove necessity for the loan and cannot rely on the antecedency of the debt. (*Kanhaiyalal*, A.J.C.) HARPAL SINGH *v.* HARAKH BAHADUR SINGH **22 O.C. 16=50 I.C. 795=1 U.P L R. (J C) 32.**

———*Alienation—Father—Necessity—Burden of proof—Fixation of rate of interest.*

The alienee must prove necessity for further charges on the property, if the property is made subject to further charges and also for a high rate of interest if such is charged. The fixing of rate of interest is within Court's discretion but its decision on the point may be challenged in second appeal. (*Stuart*, A.J.C.) SARABJIT SINGH *v.* GUR BAKSH SINGH. **36 I C. 916=19 O C. 159.**

———*Alienation—Father—Debts—Antecedent debts—Necessity.*

Debts not proved to have existed nor incurred for necessity are not antecedent debts to justify alienation. (*Stuart*, J C *and Kanhaiya Lal*, A.J.C.) GANESH *v.* NAGESHAR BAKSH SINGH. **36 I.C. 780=3 O L J. 451.**

———*Alienation—Father—Mortgage—Suit—Decree.*

In a mortgage suit where necessity is disproved the creditor cannot be allowed to ask in appeal for a simple money decree inasmuch as the debt had not been allowed to prove immorality. (*Lindsay*, J C.) BUDHAULAL *v.* JAGANNATH **34 I C. 737=3 O L.J. 214.**

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——— *Alienation— Father — Manager — Difference.*

Even though inadequacy of consideration may be sufficient to set aside alienation by manager of a family yet that is not a sufficient reason to render invalid an alienation by the father though he may be also the manager. (*Lindsay*, J.C.). JUGAL KISHORE *v.* RAJHABAR SINGH. **34 I.C. 89.**

———*Alienation—Father—Setting aside—Right of after born son.*

An alienation by sole surviving co-parcener cannot be questioned by after-born son as he acquires vested right only in such family property as existed on the date of his birth. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MAHESH *v.* BANWARI LAL. **31 I.C. 717=18 O.C. 162.**

———*Alienation—Father—Setting aside—Sons—Antecedent debt.*

If a father in a Hindu joint family alienated some property in which a part of the consideration was for legal necessity, a son can recover his share in the property on paying the proportionate amount of consideration money required for legal necessity, or for discharging antecedent debt. A mortgagee, enforcing a mortgage made by the father against sons in a joint family of the joint property, must prove the legal necessity or the antecedent debt or at least that his reasonable enquiries showed the above facts. A debt incurred at the time of mortgage of money advanced as consideration of the mortgage is not an "antecedent debt." (*Chamier and Piggott*, A.J.C.) MAHABIR PRASAD *v.* BASANT SINGH. **12 I.C. 347= 14 O.C. 299.**

———*Alienation —Father— Great grandfather— Alienation contested by grandson but suit dismissed—Second suit by alienee against great grandson — Right of great grandson to challenge alienation with respect to entire property.*

The dismissal of a suit by a grandson contesting in his own rights an alienation by his grandfather of the ancestral property is no bar to the right of the great grandson, who was living at the time of the alienation to challenge the same in his own right and with regard to the entire property alienated not merely to the extent of his share. (*Sundar Lal* O.J.C.,) BABU RAM *v* CHOTE LAL. **11 I.C. 291.**

———*Alienation—Father—Antecedent debt.*

Where a mortgage is executed by a father for an antecedent debt the lender is not bound to prove family necessity or benefit. (*Jwala Prasad*, A.C.J. *and Das*, J.) ABDUL RAHMAN *v.* SHIB LAL. **63 I C 570= 2 Pat. L.T. 572.**

———*Alienation — Father — Gift—Bridegroom—Ancestral property—Liability of—Sons of grantor—Whether liable.*

The sons and grandsons of the grantor of a maintenance to a bridegroom on the occasion of his marriage are bound, to the extent of the ancestral property in their hands, by such grant. (*Miller*, C.J. *and Mullick*, J.) MADHUSUDAN PRASAD *v.* RAMJI DAS. **1 Pat. L.T. 541=57 I.C. 341= 6 Pat. L.J. 516.**

HINDU LAW—Alienation—Father.

———*Alienation — Father—Mortgage—Suit by sons to set aside—Onus—Suit to enforce security—Difference.*

There is a distinction between a case where the sons bring a suit for setting aside alienations made by their father and recovery of possession of property which has passed into the hands of the alienee and that brought by the mortgagee to enforce his security against the joint family. In the former case, the sons must show the grounds on which they seek to set aside the alienation ; in the latter it is the mortgagee who has to show how he claims re-payment of the debt of the father. 39 All 437 ; 31 All. 176 (F.B.), Ref. (*Coutts and Sultan Ahmed*, JJ.) SUKDEO JHA *v.* JHAPAT KAMAT. **5 Pat. L.T. 120=1 Pat. L.J 49= 2 U.P.L.R. (Pat.) 39=64 I.C. 946= 1920 Pat. 67**

——— *—Alienation—Father—Setting aside—Sons not in existence, if can question.*

Sons born after an alienation by the father of ancestral property have no right to question such an alienation, inasmuch as the transfer was prior to any right which accrued to the sons by reason of their birth. It does not matter if the alienation was unnecessary or for illegal or immoral debts. 34 Cal. 372 ; 33 All. 283, Foll. (*Chapman and Jwala Prasad*, JJ.) BISHWANATH PRASAD SAHU *v.* GAJADHAR PRASAD SAHU. **1917 Pat. 356= 3 Pat. L.W. 286=43 I.C 370= 3 Pat. L.J. 168.**

———*Alienation—Father—*Mitakshara.

A father can sell or mortgage his and also his sons' shares to pay off an antecedent debt of his own, unless it is of an immoral or illegal nature, and the decree passed against the father can be enforced against sons, though the sons were not parties to the suit. (*Chapman and Roe*, JJ.) RAGHUNANDAN SINGH *v.* PARMESHWARDAYAL SINGH. **2 Pat. L.J. 306=1 Pat. L.W. 636= 39 I.C. 779=1917 Pat. 137.**

———*—Alienation—Father—Decree on mortgage—Binds sons' interest in the joint estate—Sons not parties to the suit.*

A decree on a mortgage against a Hindu father governed by the Mitakshara Law binds the sons' interest in the joint estate, even though the sons may not have been parties to the suit. The right to redeem the family property subject to a mortgage by the father and sold in execution of a mortgage decree, cannot be exercised without first setting aside the sale. It is doubtful whether a Mitakshara son can sue to redeem the property, if he has been deliberately and with notice of his existence

omitted from a suit upon a mortgage made by his father. (*Sharfuddin and Roe, JJ.*) BHOLAJHA *v.* KALI PRASAD
1 Pat. L.J. 180=34 I.C. 288=
2 Pat. L.W. 413.

Alienation—Guardian.

———*Alienation—Guardian—Legal necessity.*

Where the mother as guardian alienated certain property but only a portion of the consideration for the alienation of the property was for legal necessity. *Held*, on the paying back to the vendee that part of consideration which was for legal necessity the plaintiffs would be entitled to get back their share in the property alienated. (*Gokul Prasad, J.*) LAKHRAM SINGH *v.* SHEO PRASAD.
1922 All. 316.

———*Alienation— Guardian — Necessity—Interest exhorbitant.*

Two mortgage bonds were executed, one for Rs. 1,000 with compound interest at 18 per cent. per annum, and the second which was executed the next day was for Rs. 99 executed by the mother of the mortgagors of the first deed and was attested by the sons. *Held*, that in regard to the first bond there was no necessity for borrowing money at 18 per cent. per annum and 10 per cent. per annum, simple interest was ample; and in regard to the second bond the mere fact that the sons witnessed it did not make the mortgage valid. (*Richards, C.J. and Bannerjee, J.*) LAL SINGH *v.* SURJAN SINGH.
38 I.C. 664=
15 A.L.J. 124.

———*Alienation — Guardian — Binding nature on minor.*

The test with regard to the binding nature of an alienation by a natural guardian upon the minor as laid down in *Hunooman Persaud's case* 6 M.I.A., p. 393, is that the power *must be* exercised by the guardian rightly for necessity or for the benefit of the infant. It would be open to the alienee to establish that he had made all proper and necessary enquiries and that he had acted in good faith in advancing the moneys to the natural guardian of the minor. (*L. A. Shah and L. C. Crump, JJ.*) RAOJI THAKARAM *v.* PREMRAJ SADARAM MARWADI.
1923 Bom. 213.

———*Alienation—Guardian—Prudence and necessity—De facto guardian.*

The guardian of a minor is not limited only to making such dispositions of the latter's property as he is compelled to make by sheer necessity. Whether what he did was or was not for the benefit of the minor and as such binding on the latter was determined in this case by asking what would have been the probable result if the guardian had not taken the steps he did take and as it appeared that bigger sacrifices would have become inevitable if the steps in question had not been taken,

the transaction was upheld as that of a prudent administrator. (*Walmsley and Panton, JJ.*) SM ISHANI DASI *v.* RAJENDRANATH JOSH.
23 C.W.N. 858=48 I.C. 303=28 C.L.J. 250.

———*Alienation — Guardian — Benefit—Necessity.*

'Benefit' is different from 'necessity' but does not necessarily include a speculative development of a minor's estate. (*Mookerjee and Newbould, JJ.*) KRISTA CHANDRA *v.* RATAN RAM PAL.
20 C.W.N. 645=
35 I.C. 673=23 C.L.J. 432.

———*Alienation—Guardian—Not described as such—Mother acting on behalf of her minor sons.*

When a transaction was entered into by a Hindu mother in her own name, but really on behalf of and for the benefit of her minor sons, the latter would be bound by it. The Court must look to the substance of the transaction, not merely to the form of expression. (*Mookerjee and Beachcroft, JJ.*) GIRIJA NATH ROY *v.* UPENDRA NATH PAL.
20 I.C. 241.

———*Alienation— Guardian — Necessity—Convenience of management.*

Under the Hindu Law the natural female guardian of a minor cannot dispose of the property of the minor because she wishes to live with her relatives and obtain their help in managing their ancestral properties. The fact that her relatives and those of the minor advise her to that effect makes no difference. (*Abdur Rahim and Spencer, JJ.*) PONNUSWAMI PILLAI *v.* SUBRAMANIA PILLAI.
53 I.C. 412.

———*Alienation—Guardian—Minor's rights.*

Relinquishment by mother acting as guardian of minor son of a Zemindary for an insignificant consideration, does not bind the minor even as a family settlement. (*Wallis, C.J. and Srinivasa Aiyangar, J.*) VISVANATHASWAMI NAICKER *v.* KAMULU AMMAL.
(1916) M.W.N. 968=2 L.W. 1214=
19 M.L.T. 296=31 I.C. 833=30 M.L.J. 451.

———*Alienation— Guardian — Necessity—Proof—Recitals.*

Mere recitals in documents as to the binding nature of debts incurred by a guardian are not enough to bind the minor. There must be evidence *aliunde* to establish it. 1 L.W. 794: Foll. (*Ayling and Seshagiri Aiyar, JJ.*) RAMINEEDI RAMACHANDRAYYA *v.* BOBBA JANAKIRAMAYYA.
1 L.W. 805=
26 I.C. 66=(1914) M.W.N. 874.

———*Alienation — Guardian — Release — Validity of.*

The guardian of a minor without independent advise and in absence of disputes about the minor's right cannot execute a release of all the minor's rights over a large extent of property in consideration of grant of small portion. (*Miller and Abdur Rahim, JJ.*) VISVANATHASWAMI NAICKER *v.* KAMUAMMAL.
21 I.C. 724=24 M.L.J. 271=

HINDU LAW—Alienation—Guardian.

———*Alienation — Guardian — Minors — Right to set aside—Limitation.*

When the mother of two Hindu minor brothers alienates their property as guardian and the elder of the two attains majority and does not challenge the alienation within three years of his majority, the rights of both the minors become extinguished. (*White*, C J. *Sankaran Nair and Sadasiva Aiyar*, JJ.) DORAISWAMI SERUMADAN *v.* NANDISAWMI SELUVAN. **38 Mad 118=25 M L J. 405= 21 I.C. 410=14 M.L.T. 401=**

[On appeal from 10 M.L.T. 418= (1911) 2 M.W.N. 450=12 I C 615= 21 M.L J. 1041]

———*Alienation—Guardian—Minor— Sale to discharge mortgage.*

Where a step-mother sells the family property to discharge a mortgage debt of a minor's father, the sale is not binding on the minor who not being personally liable gained nothing by the sale. But he can recover the property by payment of the debt. (*Sundara Aiyar*, J.) *In re*, RAMA REDDI. **15 I.C. 678= 11 M.L.T. 403=**

———*Alienation—Guardian* de facto*— Void.*

An alienation of the property of a minor by his *de facto* but not his *de jure* guardian, is absolutely void and the minor need not set it aside before obtaining possession. (*Prideaux*, A J.C.) SHAHU *v.* MOHIDDIN **63 I.C. 397= 4 N.L.J. 80=**

———*Alienation—Guardian—Minor, when bound.*

The powers of alienation of a guardian are the same as those of a manager of a joint family acting for the co-parceners and a minor is bound by acts of his guardian done *bona fide* and for his benefit. (*Drake Brockman*, J.C.) HANUMAN SINGH *v.* GANESH PRASAD. **50 I.C. 580=**

———*Alienation—Guardian—Necessity— Recitals.*

The mere recital of the existence of two mortgages in a subsequent deed does not bind the persons other than the executant and it is incumbent on the mortgagee to prove that the mortgage was executed for family necessity and for the benefit of the minor on whose behalf the guardian purported to act. 36 All 187 and 41 Bom. 300, Ref. (*Kanhaiya Lal*, A.J.C.) BABU *v.* SADA SHEO. **54 I.C. 240= 32 O.C. 258.**

———*Alienation—Guardian—Discharge of prior mortgage—Charge—Plaintiff's right to contest—Mortgage barred.*

Where in a suit for ejectment the defendants who were in possession, by virtue of their having paid off a prior mortgage on the property, claimed the amount so paid off, and the plaintiff's right to contest the validity of the mortgage was barred by limitation, *held*, that the plaintiff was bound to pay the amount claimed by the defendants before recovering possession of the property. (*Piggott and Lindsay*, A.J. Cs.) MUSAMMAT MASATO *v.* AZIZULLAH KHAN. **20 I C. 273=16 O.C. 119=**

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———*Alienation— Guardian— Legal necessity—Performance of Gaya Sradh of uncle of minor.*

The expenses of the performance of Gaya Sradh of a Hindu minor's uncle not being beneficial to the minor do not constitute any legal necessity. (*Sharfuddin and Roe*, JJ.) SUBA MAHTON *v.* MUNSHI MAHTON. **40 I C. 625.**

———*Alienation — Guardian —Necessity— Onus.*

It is for the alienee or creditor to prove that a transaction by a guardian of a Hindu minor was for a legal necessity and for the benefit of the minor. Where he is sued on the loan along with the minor and the guardian confesses judgment, a money decree should be passed against the guardian. (*Parlett*, J.) ANNAMALAY CHETTY *v.* NAUMA. **17 I C. 909=5 Bur. L.T. 157.**

———*Alienation—Guardian—Setting aside —Guardian not party—Estoppel.*

The guardian is a necessary party to a suit by a minor co-parcener after attaining majority against the alienee from the guardian in possession, on the ground that the alienation was fraudulent. A party relying on the guardian's appointment for one purpose is estopped from repudiating it for another. (*Crouch*, A.J.C.) VALJI JASRAJ *v.* TAYBJI MAHMED BHOY. **25 I.C. 876=8 S.L.R. 44.**

Alienation—Manager of Endowment.

———*Alienation—Manager of endowment— Powers of—Acquisitions with income of asthal— Accretion to asthal.*

The mahant of a Hindu *asthal* of mutt holds the property in trust for the institution itself. He can only alienate it in case of necessity. Acquisitions with the income of an *asthal* are subject to the same trust as the original property and subject to the same restrictions on alienation. In the absence of a necessity which would render the debts contracted by him binding on the institution a mahant has no power to alienate its properties for the purpose of discharging those debts and if the *asthal* was not liable for such debts, his successor is entitled to have the sale set aside. (*Mr. Ameer Ali.*) BASUDEO ROY *v.* MAHANTH JUGAL KISHWARDAS. **3 Pat. L W. 57= 35 M L.J 5=22 C.W N. 841= 28 C L.J 476=24 M.L T. 305= 20 Bom. L.R. 1088=16 A.L.J. 601= 8 L W. 130=45 I C. 818= (1918) M W.N. 431 (P.C.)**

———*Alienation—Manager of endowment— Permanent lease—Necessity—Benefit.*

A permanent lease of temple lands at a fixed rent or rent free for a premium, is valid only

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if justified by unavoidable necessity. This is so whether the lands are agricultural lands or a building site, for in either case the debutter estate is deprived of the chance it would have, if the rent were variable of deriving benefit from the enchancement in value of the future of the lands leased. 13 M.I.A. 270; 31 I.A. 83; 36 I.A. 148, Ref. The expression "benefit to the estate" as justifying an alienation by the guardian of an infant or the trustee of a religious endowment cannot be precisely defined; but it includes the preservation of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions of it from injury or deterioration and such like things. 6 M.I.A. 393; 2 I.A. 145; 4 I.A. 52, Ref. A shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark on a money lending business, however, attractive and lucrative it might be. Nor is he entitled to alienate part of the endowment of his own charity to enrich a separate and alien charity. A custom authorising the shebait of a temple to alienate dedicated property absolutely at his will and pleasure would be opposed to the intention of the original endower who presumably meant the worship to be perpetual. (*Lord Atkinson*), PALANIAPPA CHETTY *v.* SREEMATH DEIVASIKAMONY PANDARA SANNATHI.

40 Mad. 709 = 21 C.W.N. 729 = 15 A.L.J. 485 = 1 Pat. L.W. 697 = 33 M.L.J. 1 = 19 Bom. L.R. 567 = 22 M.L.T. 1 = (1917) M.W.N. 507 = 26 C.L.J. 153 = 6 L.W. 222 = 39 I.C. 732 = 44 I.A. 147 (P.C.).

[Affirming 9 I.C. 281 = 34 Mad. 535.]

———*Alienation—Manager of endowment—Mortgage—Necessity—Proof of—Lapse of time—Acknowledgment by successive trustees—Non-production of accounts.*

In a suit on a mortgage granted over the property of a mutt by its head, the onus is on those representing the mortgagee to prove that the debt was incurred for a necessary expense of the institution itself. Where however many years have elapsed since the debt was originally incurred, both lender and borrower being dead, and succeeding heads of the mutt have recognised the debt as binding on the Mutt, the Court should be more readily satisfied than where the mortgage is of more recent date or its validity has been disputed. If the books of the mutt which would show the nature of the transaction are withheld from the Court, an inference adverse to the mortgagor can be properly drawn. (*Lord Shaw.*) MURUGESAM PILLAI *v.* GNANA SAMBANDA PANDARA SANNADHI.

40 Mad. 402 = 21 M.L.T. 288 = 32 M.L.J. 369 = 15 A.L.J. 281 = 1 Pat. L.W. 457 = 5 L.W. 759 = 21 C.W.N. 761 = 19 Bom. L.R. 456 = 25 C.L.J. 589 = (1917) M.W.N. 487 = 39 I.C. 639 = 44 I.A. 98 (P.C.).

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———*Alienation—Manager of endowment—Shebait—Limitation.*

Where the Shebait of lands dedicated to the service of an idol grants a permanent lease, a suit by his successor to recover possession after 12 years of the alienation is not barred by Art. 134 of the Limitation Act of 1877. (*Lord Macnaghten.*) ISWAR SHIYAM CHAND JIN *v.* RAM KANAI GHOSE. **38 Cal. 526 = 38 I.A. 76 = 15 C.W.N. 417 = 9 M.L.T. 448 = 8 A.L.J. 528 = 13 Bom. L.R. 421 = 14 C.L.J. 238 = (1911) 2 M.W.N. 281 = 10 I.C. 683 = 21 M.L.J. 1145 (P.C.),**

———*Alienation—Manager of endowment—Alienation of temple property.*

Custom may render private alienations valid but in determining the question, the benefit to the idol is of primary importance. Property dedicated to a deity is *Extra commercium*, and needs special protection of the sovereign whose duty it is to intervene to prevent fraud and waste. Persons having the management and possession of the property of an idol must be empowered to do whatever may be necessary for the service of the idol and for the benefit and the preservation of its property. (*Chaudhury and Cuming, JJ.*) NITYA GOPAL BANNERJEE *v.* PROVASCHANDRA MUKERJI.

21 C.W.N. 309 = 56 I.C. 19 = 31 C.L.J. 37.

———*Alienation—Manager of endowment—Bona fide purchase—Plea of.*

In dealing with property validly dedicated for religious purposes no question of *bona fide* purchase for value arises. (*Greaves and Panton, JJ.*) SARADINDU MUKHERJEE *v.* CHARU CHANDRA DUTT **53 I.C. 885 = 23 C.W.N. 872.**

———*Alienation—Manager of endowment—Permanent lease—Validity.*

The grant of a permanent lease without legal necessity is in excess of the powers of the *shebait* who grants the lease. The grant of a permanent lease at a considerable annual rent is a transfer for valuable consideration and Art. 134 of the Limitation Act applies to a suit for recovery of possession. (*Fletcher and Teunon, JJ.*) RAMESHWAR MALIA *v.* JIA THAKUR.

43 Cal. 34 = 23 I.C. 337 = 19 C.W.N. 1082.

———*Alienation—Manager of endowment—Shebait—Powers of.*

The shebait of an idol occupies a position which is analogous to that of a manager of an infant; he has the possession and management of the dedicated property but not the power to alienate it. S. 31, Cl. (2) of the Land Acquisition Act, therefore applies to the case of a shebait. (*Coxe and Ray, JJ.*) RAMPRASANNA NANDI *v.* SECRETARY OF STATE.

40 Cal. 895 = 22 I.C. 272 = 19 C.W.N. 652.

———*Alienation—Manager of endowment—Setting aside—Estoppel.*

The manager of an endowment might be guilty of breach of trust in making an alienation and yet might be estopped as against the

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bona fide transferee for value without notice of the trust. The beneficiary, the idol might not be estopped however. (*Mookerjee and Beachcroft, JJ.*) SIDHU SAHU *v* GOPI CHARAN DAS. **18 I C 969=17 C L J. 233.**

———*Alienation—Manager of endowment—Necessity—When justifiable—Setting it aside—Onus.*

An alienation of endowment property made by a mahant is not valid if it is shown that there was no necessity for alienation. The power of a shebait in this respect is analogous to that of the manager of the property of an infant. Such an alienation can be justified only if there were no other means of raising money but by the alienation. (*Mookerjee and Carnduff, JJ.*) JAGANNATH DAS *v.* BIBI RUPA. **13 I.C. 85.**

———*Alienation—Manager of endowment—Power of alienation.*

The powers of a Mahant of religious institution in matters of an alienation of endowment property are analogous to those of a Hindu widow, 3 P.R. 1902, Foll. (*Shah Din and Scott-Smith, JJ.*) AMIN CHAND *v.* SANT MURLIDHAR. **18 P R. 1913=211 P.L R. 1913=19 I.C. 219=151 P.W.R. 1913.**

———*Alienation—Manager of endowment—Permanent-tenancy.*

The grant of occupancy right to tenants of a charity land by the trustees would ordinarily be a breach of trust and there can be no presumption in favour of such a tenancy in those properties. 40 Mad. 709; 10 L.W. 427, Foll. (*Sadasiva Aiyar and Spencer, JJ.*) SUBRAMANIA AIYAR *v.* PONNAPPA GOUNDAN. **39 M.L.J. 629=28 M L.T. 389=61 I C. 597=12 L.W. 576.**

[*Also* 41 I.C. 788=33 M L J. 84. 44 I C 894=34 M.L J. 234. 13 I C. 596=15 C.L.J. 227.]

———*Alienation—Manager of endowment—Permanent lease.*

It is only under exceptional circumstances that a permanent alienation of a temple property by a trustee can be justified and when it is a question whether the temple authority granted a permanent lease or not, the presumption is against any intention to make such a grant. 40 Mad. 709 (P.C.); 13 M.I.A. 270; 15 C.L.J. 227, Foll. (*Wallis, C J. and Krishnan, J.*) CHINNMAL *v.* RATNASABAPATHY CHETTIAR. **12 L.W. 191=53 I C. 241=(1920) M.W.N 532.**

———*Alienation—Manager of endowment—Suit to recover—Estoppel.*

A trustee of a temple who for his own private purposes alienates trust property is not estopped from recovering the properties on behalf of the trust from a *bona fide* purchaser. (*Spencer and Krishnan, JJ.*) YASIM SAHIB *v.* EKAMBARA AIYAR. **37 M.L J. 698=10 L.W. 672=54 I.C. 497=26 M.L T. 441.**

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———*Alienation—Manager of endowmsnt—Permanent lease—Malabar Devaswam.*

Perpetual Kanom by a trustee of the Malabar devaswam is not binding on devaswam. (*Seshagiri Aiyar and Phillips, JJ.*) KUTTI PURATH KUNHUNNI PANIKKAR *v.* RAMAN. **26 M.L.T. 332=10 L.W. 427=52 I C. 675=(1919) M.W.N. 742.**

———*Alienation—Manager of endowment—Lease—Necessity.*

The trustee of a religious trust is not entitled to grant a permanent lease of the trust properties. 40 Mad. 709 (P.C.) Foll. (*Sadasiva Aiyar and Napier, JJ.*) VENKATAPPIER *v.* RAMASWAMI AIYAR. **10 L W. 137=52 I.C. 517=(1919) M.W.N. 548.**

———*Alienation—Manager of endowment—Trustee—Powers of.*

Since it is beyond the ordinary legal competence of the trustee of a religious endowment to grant a permanent lease of the properties of the trust a presumption in favour of the permanent tenancy from long possession and uniform rent could not lightly be made in the case of temple lands. (*Spencer and Krishnan, JJ.*) CHANDRASEKHARA SWAMI *v.* NAINAR AMMAL. **7 L.W. 194=43 I.C. 977=(1918) M.W.N. 219.**

———*Alienation—Manager of endowment—Setting aside—Suit by disciples to set aside—Limitation—Form of relief.*

It is competent to the disciples of a mutt in representative capactity to sue to set aside an alienation of mutt properties and for possession to be given to the head of the mutt. The suit is governed by Art. 120 or Art. 144 according as it is for declaration or for possession and limitation starts from the date of alienation. 28 M.L.J. 410, Foll. (*Wallis C.J. and Seshagiri Aiyar, J.*) CHIDAMBERNATH THAMBIRAN *v.* NILLASIVA MUDALIAR. **41 Mad. 124=33 M.L.J. 357=22 M.L.T. 218=42 I.C. 366=6 L.W. 666.**

———*Alienation—Manager of endowment—Permanent lease—Binding nature—Mataadhipathi—Legal position of.*

A permanent lease at a fixed rent for all time by the head of a *mutt* is not binding on his successors in the absence of legal necessity even if the rent reserved was adequate at the time of the lease. The head of a *mutt* holds the property of the *mutt* as a trustee for the *mutt* though he has large administrative powers. The sole beneficiary is the *mutt* according to the general rule. 43 Cal. 707 (P.C.), Foll. The position of the head of the *mutt* enunciated in 27 Mad. 495 and 33 Mad. 265 is changed by 43 Cal. 707, (P.C.) (*Sadasiva Aiyar and Burn, JJ.*) BALUSWAMI AIYAR *v.* VENKATASWAMI NAIKEN. **40 Mad. 745=40 I C. 531=32 M.L.T. 25.**

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———*—Alienation—Manager of endowment—Alienation of offerings.*

(Per *Coutts Trotter and Seshagiri Aiyar*, JJ.) That the money offerings made by the worshippers was the money of the deity and the *archakas* had no proprietary interest in them that permanent lease of such offerings by the Committee of the temple though *bona fide* was invalid. (*Abdur Rahim*, O C.J., *Seshagiri Aiyar and Phillips*, JJ.) KALLYAN *v.* KASTURI RANGA. **40 Mad. 212=31 M L.J. 771=20 M L T. 490=8 L W. 625=38 I.C. 73=(1917) M.W.N. 400 (F.B.).**

———*—Alienation—Manager of endowment—Power to grant lease.*

The trustees of a religious endowment cannot make the trust liable to pay compensation to a tenant who builds on a lease site without a right of permanent occupancy. (*Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) MURUGAPPA CHETTIAR *v.* RANGASAMI NAICKEN. **33 I.C. 57.**

———*Alienation—Manager of endowment—Permanent lease—Custom.*

A perpetual lease of a religious trust property is beyond the powers of the trustee. 20 M.L.J. 969, Foll. A custom which gives him such a power is not considered a valid custom, being opposed to law. No single trustee and no succession of trustees can create a lawful usage by acts in excess of their legal powers consitituting breaches of trust on their part. (*Sadasiva Aiyar and Napier*, JJ.) PERUMAL GRAMANI *v.* MAHAMAD KASIM SAHIB. **28 I.C. 840.**

———*—Alienation—Manager of endowment—Lease of reversion—Unfavourable terms.*

The grant of a reversionary lease is always objectionable and can be justified only in exceptional cases. Where a trustee just before his retirement grants a renewed lease for a long term at a low rental, several years before the expiry of the current lease, the lease is voidable by the succeeding trustee. (*Wallis*, O.C.J. *and Seshagiri Aiyar*, J.) MANGALA SAMI THEVAR *v.* THE RAJAH OF RAMNAD. **27 I.C. 361=1 L W. 1074.**

———*Alienation—Manager of endowment—Bona fide inquiry.*

An alienation by a trustee of religious trust is valid and must be upheld if the alienee has made *bona fide* enquiries and satisfied himself of its necessity. 2 Cal. 341, P.C., Foll.; 27 Mad. 465, F.B., Ref. to. (*Sadasiva Aiyar and Hannay*, JJ.) KUTTAYAKATH VIRA VERMA VALIA RAJAH AVERGAL *v.* ERIMHAL KARUANTA VALAPPIL AYISONMMA. **1 L W. 981=16 M.L.T. 503=26 I C. 239=(1914) M.W.N. 909.**

———*Alienation—Manager of endowment—Powers of alienation.*

A Mathadhipati has an absolute right to dispose of the income of the property, subject to upkeep of mutt. Alienation by the head is not necessarily utterly void, at least it cannot be avoided during his lifetime. Though he is owner in fee simple, he has in many respects the powers of life-tenant and his position is similar to corporation sole in England. His position is similar to the estate of Hindu female heir succeeding to a male's estate. (*Miller and Sadasiva Aiyar*, JJ). MUTHUSAMIER *v* METHA VITHI SWAMIAR AVERGAL. **38 Mad. 856=25 M L J. 393=(1913) M.W N. 681=19 I C. 691=13 M.L T. 498.**

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———*Alienation—Manager of endowment—Mortgage—Necessity—Proof.*

Whether the mutt properties are liable for debts incurred by the head for expenses for a litigation to contest a nomination by a previous incumbent depends upon the circumstances of each case. Where the income of the properties is at his disposal he cannot charge the corpus for such debts. (*Wallis and Sankaran Nair*, JJ.) GNANA SAMBANDA *v.* SABAPATIYA. **18 I.C. 221=(1913) M.W.N. 106.**

———*Alienation—Manager of endowment—Powers of majority—Lease of mortgage.*

A demise of temple property granted by a majority of the trustees of a temple without consulting the minority is invalid and does not bind the temple. 6 Mad. 270; 34 Mad. 406, Foll. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) ISTOOP *v.* AYAPPAN. **16 I.C. 438.**

———*Alienation—Manager of endowment—Permanent lease.*

A permanent lease of trust property at a fixed rent by the head of a mutt is invalid. A trustee has no power to create a perpetual tenure except on special grounds or circumstances of necessity. 13 M I.A. 270; 6 I.A. 88; 27 Mad. 291; 36 Cal. 1003; 2 Cal. 341; 5 M.L.T. 220; 28 Mad. 391; 6 M.I.A. 393; 12 Bom. 247, Ref; 2 I.A. 145; 27 Mad. 465; 27 Mad. 435; 5 Bom. 393; 6 Bom. 546, Ref. (*Wallis and Krishanswami Aiyar*, JJ.) DEVASIGAMANI PANDARASANNADHI *v.* PALANIAPPA CHETTIAR. **34 Mad. 535=9 M.L.T. 83=20 M.L J 969=9 I.C. 281=(1911) 2 M.W N. 154. [Affirmed on appeal 39 I C. 722=40 Mad. 709]**

———*Alienation—Manager of endowment—Lease—When valid.*

A lease by the manager of a temple is not valid unless the money was borrowed for the purposes of the temple and the loan was justified by an existing necessity and the lease was one which a prudent owner would be justified in making. 14 B L.R. 450 (P.C.), Foll. (*Mittra*, A.J.C.) NARASINGHDAS *v.* ALADADKHAN. **43 I.C. 384=14 N.L.R. 12.**

———*Alienation—Manager of endowment.*

Asthan is merely a institution of ascetics and sanyasis having no worldly connections of wealth or family and the mahant is presumed

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to have no property other than that of the institution and the offerings made to him. But he may hold private property, the character of which he must prove as such. In absence of such proof an alienation by a mohant is *ultra vires*. The fact of many alienations by successive mohants means so many breaches of trust. (*Daniels and Wazir Hussain*, A.J.Cs.) RAM PAL *v.* DURGA BHARTI. **7 O L.J. 547= 60 I.C. 440=23 O.C. 303.**

———*Alienation—Manager of endowment—Necessity.*

Trust property dedicated to a religious or charitable purpose should not be alienated except for legal necessity. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BASDEO BAN *v.* RAM SARAN. **45 I.C. 292=5 O.L.J. 38.**

———*Alienation—Manager of endowment—Interest—Necessity—Onus.*

A mortgagee of endowed property must prove that legal necessity for the loan are *bona fide* that enquiries as to the necessity therefor. A Court is not bound to decree interest at the contract rate but has full discretion to allow a reasonable rate. (*Lindsay*, J.C.) DURGA BHARTI *v.* GUPTAR PRASAD. **42 I C. 406= 4 O.L.J. 347.**

———*Alienation—Manager of endowment—Powers.*

A *mohant* can alienate trust property only for the benefit of the trust, and a time for a suit against him to set aside an alienation by him runs from the date of his death. Per *Jwala Prasad*, J.—He can justify his alienations only as being in the interest of the trust. He cannot claim adverse possession in the trust property. Per *Das*, J.—*Shebait* of an idol has no interest in the endowed properties while the head of an institution has a life-estate in the properties which are the subject-matter of the endowment. (*Jwala Prasad*, A.C.J. *and Das*, J.) RAMPODARETH SINHA *v.* BASDEO DAS. **63 I.C. 231.**

———*Alienation—Manager of endowment—Powers of.*

A person cannot sell the property bequeathed to him with a complete dedication to a religious trust, that can do so if it is merely subject to an obligation to perform certain services. 35 Bom. 156; 15 Cal. 329, Foll. (*Hayward*, J.C. *and Boyd*, A.J.C.) TAHIL RAM *v.* AILMAL KHEMOOMAL. **24 I.C. 221=7 S.L.R. 120.**

Alienation—Manager of Joint Family.

———*Alienation—Manager of joint family—Necessity—High rate of interest—Exorbitant rate—Reduction—Power of Court.*

Those who support a mortgage of joint family property made by its manager must prove not only that there was necessity to borrow the principal, but that it was not unreasonable to borrow at some such high rate and upon some such terms, as are provided by

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the mortgage. If the rate of interest is exorbitantly high although the security is ample the Court can properly infer that it was unnecessarily high, and can make a mortgage decree allowing a reduced rate. 34 All. 126; 18 I.A. 1, Ref. In a suit on a mortgage as above it is open to the defendant while admitting necessity to borrow the principal, to contend that the rate of interest was unnecessarily high. (*Lord Phillimore*). NAWAB NAZIR BEGAM *v.* RAO RAGHUNATH SINGH. **41 All. 571=36 M.L.J. 521=23 C.W.N. 700= 26 M.L.T. 40=17 A.L.J. 591= 21 Bom. L.R. 481=30 C.L.J. 86= 11 L.W. 188=(1919) M.W.N. 498= 50 I.C. 434=46 I.A. 145 (P.C.).**

[On appeal from 19 I.C. 639.]

———*Alienation—Manager of joint family—Gift.*

Gift of an ancestral property by a member of a joint family is invalid. (*Sir Walter Phillimore.*) RADHAKANTA LAL *v.* NAZMA BEGUM. **45 Cal. 733=22 C.W.N. 649= 27 C.L.J. 632=16 A.L.J. 537= 5 P.L.W. 72=23 M.L.T. 393= (1918) M.W.N. 383=35 M.L.J. 99= 45 I.C. 806=20 Bom. L.R. 724 (P.C.).**

———*Alienation—Manager of joint family—Necessity—Mortgagor's share, if liable.*

The mortgage of a joint estate made by the manager of the property, who is not the father of the other members of the joint family, can only be justified so far as it is wanted for the joint family purposes. If the necessity cannot be established by direct evidence it may be assumed if it can be shown that reasonable care was taken to ascertain if such circumstances existed and the transferee acted in good faith. In either case the burden of proof lies on the person who claims the benefit or the mortgage. If the debt was not incurred for necessity, not even the mortgagor's own interest can be sold in enforcement of the mortgage. 39 All. 500-Foll. When the mortgage is for a larger amount than the necessity warrants, it will only be upheld to the extent to which the necessity has been proved. (*Lord Buckmaster.*) ANANT RAM *v.* THE COLLECTOR OF ETAH. **40 All. 171= 34 M L J. 291=27 C.L.J. 363= 20 Bom. L R. 524=(1918) M.W.N. 446= 7 L.W. 323=4 Pat. L.W. 226=16 A.L.J 245= 23 M.L T. 228=44 I.C. 290= 22 C.W.N. 434 (P.C.).**

———*Alienation—Manager of joint family—Necessity—Antecedent debt—None—Alienation void and ineffective even as against the share of alienor.*

Where one of the members of a joint Hindu family mortgages the family property without consent express or implied of the others, and there is no special undertaking by the mortgagor that he has power to mortgage the joint property, the mortgage is void even as regards

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the share of the mortgagor in the joint family property. (*Viscount Haldane.*) LACHMAN PRASAD *v.* SARNAM SINGH. **39 All. 500 = 44 I.A. 163 = 15 A.L.J. 584 = 2 P.L.W. 29 = 21 C.W.N. 990 = 33 M.L.J. 39 = 19 Bom. L.R. 646 = 26 C.L.J. 97 = (1917) M.W.N. 516 = 40 I.C. 284 = 6 L.W. 334 (P.C.).**

———*Alienation—Manager of joint family—Sale—Recital that manager was absolute owner and that is minor brother assented—Mortgage to pay off debts of ancestor—Liability of minor's share.*

Whereof two brothers forming a joint Hindu family the elder brother executed a mortgage of the family property falsely declaring that the same was impartible and his exclusive property, that his younger brother was entitled only to maintenance and that the latter was also made a party to the deed " in order to make known his consent and approval to the loan " and that the property was made security therefor, and the evidence showed that the younger brother was a minor at the time of the transaction. *Held*, that even if it was proved that the elder brother had taken the loan for the purpose of discharging debts contracted by his father, the debt could not on the face of the deed be regarded as one contracted by the elder brother as manager of a joint family consisting of himself and his younger brother, and that the mortgage-deed was as against the minor not merely voidable but void to all intents and purposes and neither the minor nor his share of the family property was liable. (*Sir John Edge.*) BALWANT SINGH *v.* CLANCY. **34 All. 296 = 39 I.A. 109 = (1912) M.W.N. 462 = 11 M.L.T. 344 = 9 A.L.J. 509 = 15 C.L.J. 478 = 16 C.W.N. 577 = 23 M.L.J. 18 = 14 I.C. 629 = 14 Bom. L.R. 422 (P.C.)**

———*Alienation—Manager of joint family—No necessity—Voidable not void.*

An alienation by the manager of a joint Hindu family without necessity is not absolutely void. It is voidable at the instance of the persons whose interests are affected by it, namely, the co-parceners in the property. 45 M. 449 ; 46 M. 40 Ref. (*Ryves and Daniels, JJ*) JAGESHAR PANDE *v.* DEO DAT PANDE. **45 A. 654 = 21 A.L.J. 608 = L.R. 4 A. 324 = 9 O. & A.L.R. 879 = 1924 All. 51.**

———*Alienation—Manager of joint family—Necessity—Alienee of properties subject mortgage—Rights of.*

Where a mortgage is executed by the manager of a joint Hindu family and subsequently equity of redemption is sold by all the members of the family it is open to the transferee to show that the mortgage was without necessity and therefore not binding on the family. A transaction which is viodable remains good so long as it is not challenged by the members who have the option to have it set aside. It is for them to exercise or not to exercise the option. If without exercising the option and in fact admitting the validity of the mortgage they transfer the property, the transferee cannot be allowed to say that he has acquired that option by the transfer. (*Lindsay and Sulaiman, JJ.*) INAYAT ILAHI *v.* HARDEO SAHAI. **45 A. 692 = 21 A.L.J. 610 = 1924 All. 29.**

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———*Alienation—Manager of joint family—Family benefit.*

There is no rule of Hindu Law proper warranting the manager of a joint Hindu family to alienate property for the benefit of the estate. The original law allows such a thing only to arrest distress in the family. But British Indian Law has allowed the validity of such alienations. (*Gokul Prasad, J.*) SHANKAR SAHI *v.* BINCHU RAM. **1923 All. 369.**

———*Alienation—Manager of joint family—Necessity proved in part—Position of purchaser.*

It is not always possible for a manager to sell or mortgage a property for the exact amount required for family necessity but that would not justify him to mortgage or sell property for a larger amount than is absolutely necessary. Rs. 80 out of the total consideration of Rs. 400 was held not to be such a small amount as might be neglected in considering the question of the valid necessity for the alienation. The deed was set aside and plaintiff was made to pay Rs. 320 to the purchaser. 20 A.L.J. 621; 27 All. 494 and 25 All. 330, *Foll.* (*Gokul, Prasad, J.*) MATADIN TEWARI *v.* SURAJBALI SINGH. **1923 All 522.**

———*Alienation—Manager of joint family—Necessity—Burden of proof on purchaser.*

In a suit by the junior members of a joint Hindu family to contest a sale by the manager the burden of proving that the sale was justified by necessity is on the purchaser. 8 A.L.J. 1022. Ref. (*Rafiq and Stuart, JJ.*) RAM SARUP SINGH *v.* RAM SARAN SINGH. **20 A.L.J. 935 = 1922 All. 539.**

———*Alienation—Manager of joint family—Mortgage by manager—Necessity—Onus.*

In the absence of evidence tending to shake confidence in the transactions themselves or in the conduct and case of the manager or of the creditor, the onus is shifted back on to the sons or members of the family who wish to repudiate a mortgage by the manager though the initial onus is on the creditor to prove necessity. As a matter of business and common sense Courts will decline to take judicial notice of the fact that fathers of joint Hindu families or managers or kartas as the case may be, where the father is dead are necessarily and chiefly occupied in going out of their way to borrow money for purposes which they know to be unlawful and which can confer no benefit upon the general body of the family to which they belong and of which they are respected heads. On the contrary, the presumption must be in their favour, *viz.*, that inasmuch as their own interest are indissolubly interwoven with the interests, and

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the affections, of the other members, the borrowing is to assist and benefit the joint family. Though the onus of proof to support a mortgage of family property is on the creditor the question of onus is not a mere question of law. Once the principle of onus has been settled, the question still remains in the decision of each particular case, as to whether having regard to the transaction which have been established by evidence, the onus still remains where it was or whether, on the other hand it has been made to shift. In each particular case whether the onus has been shifted or not, becomes a mixed question of fact and law or rather a question of the due application of recognised principle to the varying circumstances of each case. 31 A. 176; 39 A. 437; 43 I.A. 249 Rel. (*Walsh and Ryves, JJ.*) PEARE LAL *v* SUNDER SINGH.
20 A.L.J. 653=L.R 3 A. 593=41 A. 756=1922 All. 436.

———*Alienation--Manager of joint family—Necessity—Test of.*

Where a portion of the consideration for sale of ancestral property by the manager of a joint family is found to be binding on the family, the question is not whether the consideration, which was taken for legal necessity, formed the bulk of the consideration, but whether the portion, which was not taken for legal necessity, was such a small portion as might reasonably be left out of account. It is not always possible for the manager of a joint Hindu family to sell property exactly for the amount for which the legal necessity might exist. He might be able to raise a loan by a mortgage, but it might not always be possible for him to find a mortgagee willing to take a mortgage of the property for the amount required unless the security given leaves a sufficient margin to cover the principal and interest that might eventually fall due on that transaction. In many cases the sale of a portion might be out of question and fails to command either a purchaser or its proper value. (*Lindsay and Kanhaiya Lal, JJ*). JAI NARAIN PANDE *v* BHAGWAN PANDE.
44 All. 683=L R. 3 A. 427=20 A L J. 621=1922 All. 321.

———*Alienation--Manager of joint family—Necessity—Antecedent debt—Exorbitant rate of interest—Liability of other members—Adult member joining in execution—Presumption of necessity—Setting aside alienation—Equities.*

An alienation of joint family property effected by all the members of the joint family who had attained majority with mutual consultation at the time raises a presumption that such alienation was for real family necessity. Where the rate of interest specified in a mortgage is high and there is, in addition, a provision for a penalty on non-payment of interest punctually, the provision for compound interest and the penalty might be regarded as improvident and therefore not binding on the minor members of the joint

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family. The existence of an antecedent debt of the father does not justify his alienating the whole of the family property at a sum considerably less than the market value. Where in a suit by the sons to avoid an alienation, the debt was partly for binding necessity, the plaintiffs are bound to discharge the binding portion of the debt before obtaining possession of the property alienated. (*Piggott and Walsh, JJ.*) GOVIND DASS *v.* RAM CHARAN LONIA,
68 I C 307=4 U.P.L R. (A) 25.

———*Alienation—Manager of joint family—Necessity—Third party not to question.*

The head of joint Hindu family consisting of himself and his nephews sold the equity of redemption, in respect of certain property belonging to the family. In a suit by the vendor for redemption, the mortgagees pleaded that there being no legal necessity for the sale it was invalid. *Held*, the vendor being the head of the family was competent to execute the sale but whether as between him and his nephews the sale was valid and binding sale was not a question which could be raised by the mortgagees. (*Banerjee and Walsh, JJ.*) DURGA PRASAD *v.* BHAJAN. **42 All 50=58 I C. 487=17 A.L.J 947=2 U P L.R. (A) 405.**

———*Alienation—Manager of joint family—Mortgage — Simple money decree granted—Mortgagee's rights,*

Where a mortgagee gets a simple money decree in a suit on a mortgage of joint family property and no necessity is proved for the mortgage, the mortgagee can attach and put for sale interest of the mortgagor alone. (*Tudball and Sulaiman, JJ.*) SURAJ NARAYAN SINGH *v.* JANHOLI SUKHUL. **42 All. 536=2 U.P.L.R. (All.) 196=57 I C. 14=18 A L.J. 677.**

———*Alienation—Manager of joint family—Setting aside—Partly binding.*

Where major portion of consideration is for necessity, proper decree is to confirm the sale on payment of the amount not required for legal necessity. (*Tudball, J.*) CHATTER *v.* CHOTE, **40 I.C. 269.**

———*Alienation—Manager of joint family—Necessity—Building of residential house.*

Building of a residential house may be a necessity. The manager of a joint Hindu family must be allowed a certain discretion in dealing with the family property. (*Piggott and Lindsay, JJ.*) RAM SINGH *v.* NARAIN LAL. **35 I C. 326.**

———*Alienation—Manager of joint family—Necessity—High rate of interest—Payment of Government revenue—Onus—Decree--Form of.*

It is for the creditor to show that a mortgage by the manager was made for family necessity, that it was also necessary to borrow at so high a rate and that the full amount of

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consideration was paid. Money borrowed for payment of Government revenue and utilised for that purpose is a debt for family necessity. Where a decree is passed for the sale of joint family property, the family property cannot be sold for any greater sum than the sum for which necessity is found notwithstanding that some of the members of the family have not appealed. (*Richards*, C.J. *and Banerji*, J.) GAYA PRASAD TEWARI *v.* RAMPHAL MISIR.
28 I.C. 21=13 A.L.J. 246.

———*Alienation—Manager of joint family —Sister's marriage,*

Expenses of sister's marriage are legal necessity and is binding on minors even though the eldest brother is not the natural guardian. (*Richards and Banerjee*, JJ.) RAMACHARAN *v.* MEHIN LAL. 36 All. 158=22 I C. 633=12 A.L.J. 139.

———*Alienation—Manager of joint Hindu family—Necessity—Interest.*

Mortgagee from Hindu family manager, must prove necessity for the loan at a higher rate of interest. (*Banerji and Ryves*, JJ.) RAO RAGHUNATH SINGH *v.* NAZIR BEGAM.
19 I.C. 639.

———*Alienation—Manager of joint family —Voidable.*

A mortgage executed by one member of a joint Hindu family is not altogether void but is voidable only at the instance of the persons whose rights are affected prejudicially by it. The executant cannot challenge the deed on the ground of invalidity. 31 All. 11, Foll.; 34 All. 155, Dist. There is a distinction between a mortgage of a tenure, the transfer of which is forbidden by the Legislature and a mortgage of property, the transfer of which is not forbidden but is voidable at the instance of other persons. (*Chamier*, J.) BISHUMBHAR DAYAL *v.* PARSHADI LAL. 16 I C. 629=10 A.L.J. 112.

———*Alienation—Manager of joint family —Legal necessity.*

Where the manager mortgaged the ancestral property and the money thus realised by the mortgage was utilized in the acquisition of property for the joint family. *Held*, that the mortgage was executed for legal necessity and was binding upon all the members. (*Richards*, C. J. *and Banerjee*, J.) BOHRA JETH MAL *v.* DHARAM SINGH.
14 I.C 745.

———*Alienation—Manager of joint family —Consent—Presumption.*

Where an adult co-parcener keeps silent without challenging a mortgage by his father till a suit by the mortgagee is filed, he might be presumed to have consented to the mortgage. 33 All. 283 Foll. (*Karamat Hussain and Chamier*, JJ.) KAMPTA PARSHAD SINGH *v.* SIDH NARAIN SINGH. 14 I.C. 231.

———*Alienation—Manager of joint family—Suit to set aside—Onus.*

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The onus is on the alienee to prove that he made inquiries as to necessity for the alienation by the Manager of a Joint Hindu family. 1 L. W. 249; 28 I.C. 673. Ref. The pressure on the estate, the danger to be averted and the benefit conferred on the estate are the things to be considered. If the alienee proves pressure and necessity he is not affected by the previous mismanagement of the estate. (*Karamat Hussain and Chamier*, JJ.) DIRG BIGAI SINGH *v.* BHAN PRATAP SHAH SING. 13 I C. 945=9 A.L.J. 163.

———*Alienation—Manager of joint family—Legal Necessity—Burden of proof.*

Where an infant on coming of age challenges the alienation by the Manager of a joint family, the transferee must prove the justifying circumstances for the alienation. (*Chamier*, J.) GAYA PRASAD *v.* RAGHUNATH PRASAD.
12 I.C. 178=8 A L J. 1022.

———*Alienation—Manager of joint family—Necessity—Minor co-parcener.*

A sale of a minor co-parcener's share of joint family property by the manager could be justified only on the ground of necessity. It is going too far to say that a manager of a joint Hindu family can justify a sale of joint family property merely on the ground that the sale at the time appeared to be advantageous. 44 I.A. 147, referred to. (*Macleod*, C.J. *and Crump*, J.) VISHNU VISVANATHA *v.* RAE CHANDRA.
25 Bom. L.R. 508=1923 Bom. 453.

———*Alienation—Manager of joint family —Clause in adoption deed giving father free power of alienation—Effect—Bombay School.*

In a deed of adoption, the adoptee agreed not to object to his adoptive father's mode of management. He afterwards objected to certain alienations as not binding on him. *Held*, the alienations should be tested by the standard of a father's powers in spite of the deed and the son's share will not pass if it is an unauthorised alienation. (*Maclead*, C. J. *and Crump*, J.) BALAPPA GHENAPPA *v.* AKKUB I.
74 I C. 220 (2).

———*Alienation—Manager of joint family—Necessity—Proof.*

Proof lies upon the alienee from the manager of a Hindu family that he made the necessary enquiries as to the necessity for the alienation and satisfied himself as to the same. When such enquiry is made and he acts *bona fide*, is not bound to see that the consideration is applied for necessity. The burden of proving *bona fides* and enquiry is on him. (*Scott Smith and Fforde*, JJ.) RODHA RAM *v.* AMAR CHAND.
4 Lah 208=1924 Lah. 141.

———*Alienation—Manager of joint family—Consideration used for legal necessity—Suit by reversioner.*

Where money was borrowed by mortgaging ancestral property to fight out successfully an uncontested pre-emption suit. *Held*, the act in

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borrowing the money to obtain the land by pre-emption was an act of good management and that it must be held that the loan was raised for valid necessity. (*Scott Smith and Fforde*, JJ.) PARTAB SINGH *v.* HAKIM SINGH.
4 Lah. 171=1923 Lah. 480.

———*Alienation—Manager of joint family —Portion of consideration binding—Decree.*

In a suit by a Hindu co-parcener to set aside an alienation made by the manager where part of the money was found to be binding on the family, the Court should make the decree for possession conditional on the payment of the Court-fees necessary for suits for possession. (*Martineau and Harrison*, JJ.) AMIR AND DAULAT *v.* KHAN CHAND. **1923 Lah. 255.**

———*Alienation—Manager of joint family —Necessity—Burden of proof—Alienation of property—Consideration—Proof of.*

Where an alienation is sought to be contested after the lapse of a long series of years, alienee should not be called upon for strict proof of legal necessity. (*Abdul Raoof and Bevan-Petman*, JJ.) SUHUA *v.* DEVI DIAL.
70 I.C. 1002=4 L.L.J. 516.

———*Alienation—Manager of joint family— Legal necessity—Proof of after a lapse of time.*

Strict proof of legal necessity for an alienation should not be insisted upon after a lapse of many years, especially when 3/5ths of the consideration has been given for necessity. (*Shadi Lal and Broadway*, JJ.) TARACHAND *v.* KASHIRAM.
17 P.R. 1917=9 P.W.R. 1917= 39 I. C. 121=71 P.L.R. 1917.

———*Alienation—Manager of a joint family —Legal necessity—Presumption.*

When all the surviving male members of a Hindu family raise a loan for a purpose, the whole of the amount is presumed to be raised for the purpose. When a long time has passed from execution of a deed by all the male members, necessity for the debt may safely be presumed. (*Johnstone*, C.J. *and Shah Din*, J.) JIVNA *v.* NATHU. **38 I. C. 586= 17 P.W.R. 1917.**

———*Alienation—Manager of joint family —Inquiries.*

If the creditor of the manager has the means to know the purpose for which the loan is made he must satisfy himself as to the existence of legal necessity for the debt. (*Brodway and Shadi Lal*, JJ.) AMAR NATH *v.* BULAKI DAS. **62 P.W.R. 1917=50 P.L.R. 1917= 38 I.C. 363=21 P.R. 1917.**

———*Alienation—Manager of joint family —Liability of co-parceners—Mortgage.*

A decree in a suit on a mortgage by a deceased manager without necessity should be limited to the assets of the mortgaged lands in the hands of the surviving co-parceners. In the absence of necessity the decretal amount

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should not be made a charge on the lands. (*Rattigan and Leslie-Jones*, JJ.) ARURA *v.* BALAK RAM. **157 P.L.R. 1915= 30 I.C. 528=147 P.W.R. 1915.**

———*Alienation—Manager of joint family —Necessity—Trade.*

Among Jat agriculturists an alienation in lieu of money borrowed for the purposes of trade is not an alienation for necessity. (*Rattigan and Shadi Lal*, JJ.) SANTA SINGH *v.* WARYAM SINGH. **19 P.R. 1915= 207 P.L.R. 1914=24 I.C. 361= 147 P.W.R. 1914.**

———*Alienation—Manager of joint family —Setting aside—Proceeds of sale divided by members of the family—Effect.*

Where the proceeds of an alienation made by manager of a joint Hindu family are divided among themselves by the junior members at a family partition it is not open to the latter to impeach the alienation as not being supported by necessity. (*Schwabe*, C. J. *and Wallace*, J.) DURAISAMIER *v.* SUBBARAYA IYER.
17 L.W. 348=32 M.L.T.(H.C.) 277= (1923) M.W.N. 242=1923 Mad. 442 (1).

———*Alienation — Manager of joint family — Major portion of the consideration binding—No misconduct—Form of decree.*

Where in a suit by a minor to set aside an alienation of joint family property by his father it is found that out of the recited consideration of 500 rupees only Rs. 320 was paid for necessity and the balance was not so paid, on a question arising as to the proper form of decree to be passed in the case. *Held*, that as the value of the properties had depreciated considerably and as there was no misconduct on the part of the purchaser, the properties should be sold and the proceeds distributed in the shares to which the parties were entitled. (*Sir Walter Schwabe*, C. J.) KUTTUVA MEENATCHI AIYAR *v.* DARMIAH RANGA CHARLU.
16 L.W. 595=(1922) M.W.N. 719= 1923 Mad. 120.

———*Alienation — Manager of joint family—Mortgage for purchasing other lands.*

Where the manager executed a mortgage of ancestral lands for purchasing other lands in another village and it was not shown that the transaction was for the benefit of the family: *Held*, that the minor co-parcener's share in the joint family lands was not liable be sold to discharge the mortgage debt. (*Sadasiva Iyer and Spencer*, JJ.) SUBRAMANIA CHETTY *v.* CHIDAMBARA MUDALI.
14 L.W. 495=41 M.L.J.459=69 I.C. 756= (1921) M.W.N. 740.

———*Alienation—Manager of joint family —Binding character—Burden of proof.*

The onus of proving that an alienation made by the adult members of a joint Hindu family, is not binding on the minors, for want of consideration, lies on those minors seeking to

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set it aside. (*Ayling and Seshagiri Aiyar*, JJ.) KRISHNA *v.* MADHAVA, **63 I.C. 258.**

———*Alienation—Manager of joint family—Setting-aside—Necessity—Past consideration not valid.*

If only a very small part of the consideration found invalid, the sale will be upheld if the purchaser pays to the plff, the part of the consideration which is not binding on him. In raising equity in favour of the purchaser adequacy of the price paid, and necessity for sale are relevant considerations. 46 Cal. 566 (P.C.), Foll. But when the consideration found to be valid is only a small portion of the whole, there is no equity in favour of the purchaser. (*Spencer and Krishnan*, JJ.) VISVANATHA SASTRIGAL *v.* VALAMBAL AMMAL. **62 I.C. 701.**

———*Alienation—Manager of joint family—Gift to co-parcener.*

A gift of joint family property to a co parcener by the other members for performing the shradha of a deceased sonless member is valid. (*Seshagiri Aiyar and Phillips*, JJ.) BAGIRATHI AMMAL *v.* BAGIRATHI AMMAL. **25 M.L.T. 358=50 I.C. 597.= (1919) M. W. N. 350.**

———*Alienation—Manager of joint family—Decree against—Sale in execution.*

To ascertain what passes at a sale in execution of a decree against the manager it is necessary to look (1) at the circumstances attending the creation of the debt, (2) form of plaintiff's claim, (3) the decree, (4) attachment, (5) sale proclamation, (6) certificate of sale. A decree against a Mitaksbara father as manager of the family under the Transfer of Property Act for sale of properties not mortgaged is not in the nature of a personal decree against the father as a member and all the family properties pass by sale in execution of such a decree. (*Oldfield and Krishnan*, JJ.) PATTABHIRAMA NAIDU *v.* SUBRAMANIA CHETTY. **45 I.C. 76=7 L.W. 438.**

———*Alienation—Manager of joint family—Necessity—Purchase of fresh property—Trade—Adult co-parceners joining in sale—Effect of—Suit by minor members to set aside alienation—Mesne profits—Right to.*

The starting of a prospective trade is not a ground justifying alienation of family properties by the manager. An alienation of joint family properties for the purpose of purchasing other properties instead is not binding on the members of the family, at any rate in the absence of clear benefit to the family. Where the sale-deed itself does not show any necessary purpose and there is no evidence of necessity, the fact that the adult members of the family joined in it does not give any weight to the transaction. Where the co-parceners of a joint family sue to a side alienations by the Manager they are not as of right, entitled to mesne profits from the date of alienation.

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Mesne profits are in the nature of damages which the Court will mould according to the justice of the case. 39 All. 61, Ref. (*Wallis, C.J. and Kumaraswamy Sastri*, J.) GANESA AIYAR *v.* AMERTHASWAMI ODAYAR. **23 M.L.T. 248=44 I.C. 605= (1918) M.W.N. 892.**

———*Alienation—Manager of joint family—Description as guardian.*

An alienation by the Manager of a family on behalf of the family is binding on all the members of the family and the mere fact that the Manager misdescribes himself as the guardian of the minor members, is immaterial. (*Spencer and Krishnan*, JJ.) MUTU KUMARA CHETTIAR *v.* ALAGAPPA CHETTIAR. **42 I.C. 554=6 L.W. 518.**

———*Alienation—Manager of joint family—Setting aside—Suit by minor—Necessity.*

Where an alienation made by an elder brother after attaining majority and by the mother as the guardian of the minor plff. is found to be for a *bona fide* family purpose, the transaction is valid even though the plff.'s mother is unnecessarily joined in the deed, 34 All. 213, Dist. Mere non-mention of the fact that he executed the conveyance as a managing member does not render the deed any the less effective. The interests of the minor must be properly represented. This rule is subject to the rule that is it not open to every one to intermeddle with the estate of the minor on the ground that he is acting for the minor's benefit. (*Spencer and Seshagiri Aiyar*, JJ.) SURAPA RAJU *v.* VENKAYYA. **32 I.C. 802=(1915) M.W.N. 908.**

———*Alienation—Manager of joint family—Gift—Daughter on marriage—Validity of.*

A gift by the manager of a tenth of the joint family properties to the daughter of the co-parcener on the occasion of her marriage, is binding not only on the sons of the donor but also on the other co-parceners. (*Sankaran Nair and Oldfield*, JJ.) *In re* SUBBA NAICKER. **30 I.C. 781=2 L.W. 754.**

———*Alienation—Manager of joint family—Necessity—Fund raised to defend a member against criminal charge.*

A fund raised by alienating joint Hindu family property to defend a member of the family against a criminal charge is a fund raised for family necessity and the alienation is binding on the joint family if it is shown there were no other funds available. (*Sankaran Nair and Tyabji*, JJ.) SENCHURAMA NAIDU *v.* ANNAPURNI AMMAL. **30 I.C. 79.**

———*Alienation—Manager of joint family—Necessity—Bona fide belief—Inquiry.*

An alienation of joint family lands by the manager of a joint Hindu family is binding upon the other members of the family, if th

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purchaser after making *bona fide* inquiries as to the necessity had purchased it for a proper price believing in the existence of the necessity. The failure on the part of the purchaser to prove that the purchase money was really spent for the purposes mentioned will not invalidate the sale. (*Sadasiva Iyer and Spencer*, JJ.) GANGASETTI *v.* RAMAMURTHI. **28 I C 673 = 1 L.W. 249.**

——*Alienation—Manager of joint family—Necessity — Expense of defending head of family from criminal prosecution—Legal necessity.*

The expense of defending the head of a Hindu family, in a criminal prosecution is a legal necessity and a sale therefor is binding on the members of that family. 34 All. 4 ; 33 All. 472, Foll. The principle enunciated in 6 M.I.A. 393 at 424 as to mortgages applies with necessary changes to sales as well. (*Tyabji and Spencer*, JJ.) RAMALINGAM PILLAI *v.* MUTHAYYAN. **1 L.W. 544 = 26 M.L.J 523 = 24 I C. 356 = 16 M L T. 76.**

——*Alienation—Manager of joint family—Minor's share—Purchaser's duty.*

In order that an alienation, by the manager of joint Hindu family, of a minor co-parcener's share, may be binding on the minor, the purchaser must show that there actually was necessity or he in good faith believed, there was family necessity. (*Ayling and Sadasiva Aiyar*, JJ.) SUBRAMANIA NADAN *v.* RAMSAMI NAIDU. **21 I.C. 656 = 25 M L J. 563.**

——*Alienation—Manager of joint family—What passes.*

In determining what interest passes to vendee under a sale-deed executed to him by the manager of joint Hindu family it is competent to attempt to look to surrounding circumstances to see whether the executant purported to convey only his interest of the family interest. A manager can bind the minor's interest by a contract for sale of joint family property and for necessity and specific performance can be decreed against that interest. (*Ayling and Napier*, JJ.) KRISHNA IYER *v.* SHAMANCE. **23 M.L.J. 610 = 17 I C 497 = (1912) M.W. N. 1188.**

——*Alienation—Manager of joint family—Necessity—Sale of joint property—Partition.*

A sale of family property with the object of conveniently adjusting the shares of the rest of the family property is valid, the object being one of family necessity. (*Benson and Sadasiva Aiyar*, JJ.) SHANMUGAM PILLAI *v* SURYANARAYAN PILLAI. **11 M L.T. 407 = 15 I.C. 688 = (1912) M.W.N. 546.**

——*Alienation—Manager of joint family—Necessity—Marriage—Maintenance.*

An alienation by the manager of a family for providing for the maintenance and expenses of

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the marriage of his sister or step-sister is valid. (*Miller and Sundara Aiyar*, JJ.) SEENI AMMAL *v.* ANGAMUTHU. **13 I.C 802 = (1912) M.W N. 99.**

——*Alienation—Manager of joint family—Benefit—Purchase of other lands.*

The manager is entitled to sell family land if the object of the sale is to purchase which are not inferior to ancestral lands or if the transaction is for the benefit of the family. Burden of proof is on alienee. (*Sundara Aiyer*, J.) *In re* KRISHNASWAMI DAS. **(1912) M.W.N. 167 = 13 I.C. 653 = 11 M L T. 182.**

——*Alienation—Manager of joint family—Marriage expenses of male members.*

The marriage expenses of the male members of an undivided Hindu family are a legitimate charge on the family property. 20 M.L J. 855, Foll. (*Benson and Sundara Aiyar*, JJ.) ARUNACHELLA REDDI *v.* ARUNACHELLA REDDI. **10 I.C 283.**

——*Alienation—Manager of joint family—Rights of alienee.*

If a sale by the manager of a joint family is not binding on the other co-parceners the alienee may elect to take the vendors's share or sue for the return of the purchase-money. In the former case he has no equity enforceable against the other co-parcener in respect of payments properly made. 23 Mad. 89, Foll. ; 31 Mad. 176 ; 19 I.C. 861 ; 13 C.W.N. 815 ; 22 Mad. 312 ; 16 Mad. 76, Dist. (*Mitra*, A.J.C.) BHIJRAJ *v.* NATHURAN. **37 I.C. 498 = 12 N L.R. 161.**

——*Alienation—Manager of joint family—Necessity—Subsequent partition—Security of mortgagor's share.*

A mortgage of the whole or a share of the joint family property of a mitakshara family is void and inoperative as against the property hypothecated and gives the mortgagee no right even against the mortgagor's undivided share. Where the mortgagor's interest has subsequently been separated from that of the other members of the family, it may become available as security for the mortgage debt. (*Simpson and Dalal*, A.J Cs.) RAM RATAN *v.* GANGA BUKSH SINGH. **26 O.C. 245 = 10 O.L J, 193 = 9 O. & A L R. 222 = 1923 Oudh 265.**

——*Alienation—Manager of joint family—Necessity—Proof of—Recital—Value of.*

Where an alienation by the manager of a joint Hindu family is impugned by the junior members, the recitals in the deed of sale are not sufficient by themselves to establish necessity but they are clear evidence of the representation made by the manager. Where proof of actual enquiry has become impossible, the recital coupled with the circumstances, such as would justify the reasonable belief that an enquiry would have confirmed the truth of the recital is enough to support the necessity

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alleged. A representation by the father as to the existence of antecedent debts, is on the same footing as a representation by the manager as to necessity. The real value of the representation is that it indicates the scope of the enquiry that has been or may be presumed to have been made. 5 O L.J. 629; 29 O. C. 211, explained; 36 A. 187; 43 I. A. 249, referred. (*Ashworth*, J.C.) JAMNA PRASAD v. BALBHADAR. **25 O C. 388=9 O L J. 601=1923 Oudh 147.**

———*Alienation—Manager of joint family—Necessity—High rate of interest.*

It is incumbent upon those who support a mortgage made by a manager of a joint Hindu family to show, not only that there was necessity to borrow, but that it was not unreasonable to borrow at such high rate of interest and upon such particular terms as are contained in the mortgage. Where it is not shown that there was necessity to borrow on such a high rate of interest that rate cannot stand and the Court is empowered to reduce the contract rate to a reasonable rate of interest. (*Simpson and Wazir Hasan*, A.J.Cs.) BABU BASANT RAI v. LALA KESHO RAM. **9 O.L.J. 612=1923 Oudh 139.**

———*—Alienation—Manager of joint family—Manager and others, difference between—Suit to recover property—Decree, form of.*

In the case of an alienation not binding on a joint Hindu family, while the manager can sue to recover the whole entire property on behalf of the family, individual members can maintain the suit only in respect of their own shares. Where an alienation was made by an adult brother and the mother on behalf of her minor sons, and suit is brought by one of the latter to have it set aside, the proper decree to be passed is for possession of his share of the property on payment of his share of the consideration, if any, which is found binding. (*Daniels*, A.J.C.) MAHESH DAT v. RAM ASRE. **9 O.L.J. 188=4 U.P.L.R. (J.C) 38=1922 Oudh 114.**

———*Alienation—Manager of joint family—Necessity—Recitals—Adult members joining in alienation—Effect of.*

Where a sale-deed of joint family property executed by the heads of all the branches of the family mentions the purpose for which the sale was made, there is no room for raising any presumption with regard to the necessity for the transaction from the fact that all the members joined in its execution. The Court has merely to see whether the purpose recited is one which is recognised as valid under the Hindu Law. 8 B. 602, Ref. (*Daniels*, A.J.C.) MUSSAMMAT MANZURAN BIBI v. JANKI PRASAD. **9 O L J. 35=1922 Oudh 50.**

———*—Alienation—Manager of joint family—Necessity—Recitals, evidentiary value of.*

Recitals in a deed of alienation as regards the purposes for which the money was borrowed may not be sufficient to prove those purposes as regards third parties. But the recital is clear evidence of the representation made to the creditor and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recitals coupled with the circumstances will be sufficient evidence to support the deed. (*Daniels*, A J.C.) RAM SARAN v. DAWAN SINGH. **66 I.C. 36=24 O.C. 386.**

HINDU LAW—Alienation—Manager of joint family.

———*—Alienation—Manager of joint family—Suit to set aside—Cause of action—Members subsequently born.*

The cause of action for a suit for setting aside an alienation of joint family property accrues to the members on the date of the alienation or the alienee's taking possession. Members subsequently born into the family do not get a fresh cause of action on their birth. 24 O.C. 330; 61 I.C. 801, Ref. (*Dalal*, A.J.C.) SHEOAMBAR KHAN v. RATIPAL SINGH. **65 I.C. 401=8 O L.J. 679.**

———*—Alienation—Manager of joint family—Speculation.*

A mortgage of the family property by the manager for the benefit of the family is binding on the joint family property. An alienation for purposes of a speculative nature is not binding on the family but it cannot be said that in no case can the starting of a new business justify an alienation of the family property. (*Daniels*, A.J.C.) SHEO RATAN v. DRIG PAL. **63 I C. 554=8 O.L.J. 314.**

———*—Alienation—Manager of joint family—Necessity—Inquiry by purchaser.*

The burden of proof lies on a mortgagee from a father in a joint Hindu family to show that an alienation by the person with a limited power was for legal necessity. (*Stuart and Kanhaiya Lal*, JJ.) JAI NARAYAN v. RAJ RANG BAHADUR SINGH. **48 I.C. 914=5 O.L.J. 691.**

———*—Alienation—Manager of joint family—Setting aside—Right of after born co-parcener.*

Alienation without the consent of even one member and without necessity is invalid not only against that non-contesting member but also against subsequently born co-parcener. 33 All. 654, Ref.; 18. O.C. 162; 3 O.L.J. 180, Ref. (*Kanhaiya Lal*, A.J.C.) SRI KRISHNA v. LAKHPAT. **39 I.C. 287=4 O.L.J. 73.**

———*Alienation—Manager of joint family—Binding on other members—Benefit.*

A deed of transfer executed by the manager of a joint Hindu family who was its only adult member at the time binds the other members of the family, if it is to their benefit though the manager did not execute the deed explicitly as manager. (*Stuart*, A.J.C.) MAHADEO PRASAD v. TIKNI. **36 I.C. 685=3 O.L.J. 390.**

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———*Alienation—Manager of joint family—Benefit—Necessity.*

An advantageous acquisition of some property at the expense of the ancestral estate, made, in the interests of the family (*i. e.*,) to enlarge its means of subsistence, by the manager, is binding on the minor members, just as such as one made to pay antecedent debt or to meet an immediate necessity and the minors cannot on attaining majority impeach the transfer of which the benefit has been enjoyed. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J.C.) MUNESHAR BAKHSH SINGH *v.* ARJUN SINGH. **3 O.L.J. 237 = 31 I.C. 738 = 19 O.C. 100.**

———*Alienation—Manager of joint family—Setting aside—After born member.*

Only valid alienation of joint family property binds the after-born member. But ratification of an invalid alienation of joint property by all the members at the date of the alienation will not bind an after-born member. (*Lindsay*, J.C.) MURARI LAL *v.* JALIPA SAHAI. **34 I.C. 447 = 3 O.L.J. 180.**

———*Alienation—Manager of joint family—Minors not represented expressly—When binding.*

Assignment of mortgage rights belonging to a joint family by the one major male member thereof who does not purport to act as family manager, is valid and binding on the minor members where the transfer was out of family necessity. (*Lindsay*, J.C.) RUKMIN KUAR *v.* ASHIQ HUSSAIN, S.C. **34 I.C. 3 = 3 O.L.J. 32.**

———*Alienation—Manager of joint family—Marriage expenses—Necessity.*

Among *Thakurs* of Oudh governed by *Mitakshara* the expenses of a marriage of a daughter of deceased member to whose property the remaining male members have succeeded by survivorship is a family necessity. 26 Mad. 505, Diss. (*Stuart*, A.J.C.) GANGA BAKHSH SINGH *v.* AHBARAN SINGH. **33 I.C. 601 = 3 O.L.J. 11.**

———*Alienation—Manager of joint family—Consent of other persons.*

No alienation by one co-parcener, even if he is a managing member of the family will bind the other adult co-parceners, unless their consent to the alienation is either expressed or may be implied from their conduct. (*Lindsay*, J.C.) KAMTA *v.* BHAGIRATH. **27 I.C. 517 = 2 O.L.J. 30.**

———*Alienation—Manager of joint family—Setting aside—Rights of Junior members and alienees.*

A co-parcener in a joint Hindu family property, who establishes that a member of the family has alienated family property without legal necessity, can sue to recover the whole property. He cannot be allowed to sue for his own share of any specific portion thereof for the simple reason that in a Mitakshara joint family no particular share can be predicted as belonging to any individual member. The only concession, which the Courts have so far made in the direction of allowing the share of the transferor to be affected, is where the share of the transferor has been attached in execution of any money-decree. In such a case, the Courts have held that a co-sharer who sues for the recovery of the whole property will be allowed to recover, but it will be declared that the purchaser of the interest of the transferor is entitled to a partition and to recover thereafter that portion of the property which represents the transferor's interest therein. (*Mullick and Bucknill*, JJ.) SHYAM SUNDER RAI *v.* JAGARNATH MISRA. **2 Pat. 925 = 1 Pat. L.R. 373 = 1923 Pat. 263 = 1923 P. 590.**

———*Alienation—Manager of joint family—Legal necessity.*

To save other properties from sale at execution, the manager sold the mortgaged property. But the purchase money could not be paid by the purchaser and the manager became a surety to the mortgage executed by the purchaser in order to be able to find money to set aside the execution sale before confirmation. *Held*, there was legal necessity for the last transaction and the manager was justified in becoming a surety to the mortgage. (*Das and Adami*, J.) KANHAI LAL KHEMKA *v.* THAKUR PRASAD SINGH. **1923 P. 268.**

———*Alienation—Manager of joint family—No necessity—Jurisdiction of court to grant equitable relief does not exist.*

Where an alienee from the manager of a joint Hindu family fails to enquire and satisfy himself of the truth of the representations made by the manager, there is no room for the application of any equitable doctrine based on the representations. If notwithstanding the representation by the manager, he agrees to make good that representation if necessary by partition or otherwise the court has power to compel him to do that which he undertook. In the absence of any such undertaking, the court has no power in a suit brought to set aside an alienation of joint family property to direct that the share of the executant be available for the alienee the transaction being void altogether. 39 A. 500, Foll.; 13 C.W.N. 815; 14 C.W.N. 552, Diss. (*Das and Bucknill*, JJ.) JATADARI SINGH *v.* DUKHI SINGH. **4 Pat. L.T. 64 = 1923 P. 197.**

———*Alienation—Manager of joint family—Necessity—Consent.*

The law is that the head of a joint family cannot mortgage the joint family property without consultation with, and consent of, other members, but where legal necessity is proved it is unnecessary to prove consent, because this will be implied in the case. (*Coutts and Ross*, JJ.) KAMLA PRASAD *v.* NATTUI NARAYAN SINGH. **1922 Pat. 136 = 3 Pat. L.T. 401 = 1923 P. 347.**

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———*Alienation—Manager of joint family—Necessity as regards rate of interest—Plea necessary.*

To support a mortgage by the karta of a Hindu family, the plaintiff mortgagee has to prove not only the necessity for the loan but also the necessity to borow at the rate stipulated. The onus as regards the latter is however discharged if the defendant does not specifically raise the plea that the rate of interest was not justified by legal necessity; for the facts necessary to prove legal necessity for the mortgage may be entirely different from the facts necessary to prove that there was necessity to borrow money at such and such a rate. Where no such plea was raised in the trial court, it cannot be allowed to be raised in appeal. (*Miller*, C.J *and Adami*, J.) AINTHAN GOPE *v.* KHAKHAR SAHU. **3 Pat L.T. 367= 67 I.C. 790=1922 Pat. 856.**

———*Alienation—Manager of joint family—Essentials of validity.*

In order that an alienation should be binding on the family, it must be proved that it was for family benefit and it is immaterial whether the alienation was by *karta* or not. Whether the transaction is a loan for purchase of goods, the creditor must show that he made enquiries and was satisfied that it was for family benefit. (*Jwala Prasad and Das*, JJ.) DEBI SARAN SAHAI *v.* BANKEY BEHARI LAL. **63 I.C. 223.**

———*Alienation—Manager of joint family—Mortgage—Whether affects share of mortgage.*

A mortgage by the *Karta* of a joint Hindu family, without the consent of the other members, the debt not having been incurred for any family necessity or in payment of an antecedent debt, is in invalid, and gives the mortgagee no charge even upon the undivided share of the mortgagor. (*Miller*, C.J. *and Mullick*, J.) BANKHANDI RAI *v.* KISHORI MANDAL. **2 P.L.T. 17=6 P.L.J. 72= 61 I.C. 102=1921 Pat. 113.**

———*Alienation—Manager of joint family—Enquiry by creditor.*

Dealing with a Hindu family governed by *Mitakshara* a creditor cannot content himself with entries in the Collectorate registers or survey papers, but must enquire, whether and how far the other members are interested in it; the *prima facie* presumption will be that they are so interested. (*Miller*, C.J. *and Mullick*, J.) KANHU LAL MARWARI *v.* PALU SAHU. **5 Pat. L.J. 521=1 Pat. L.T. 536= 2 U.P.L.R. (Pat) 171=57 I.C. 353= 1920 Pat. 205.**

———*Alienation—Manager of joint family—Contract for sale of land—Minor members bound, if necessity or benefit proved—Contract specifically enforceable against them*

Contracts such as agreements to sell, made by the managing members of a joint Hindu family some of the members of which are minors, for family necessity or for the benefit of the family, can be enforced against the family. Case-law discussed. (*Chamier*, C.J. *Mullick and Atkinson*, JJ.) HARI CHARAN-KUAR *v.* KAULA RAI. **1 Pat. L.W. 587= 2 Pat. L.J. 513=40 I.C. 142= 1917 Pat. 201.**

HINDU LAW—Alienation—Widow—Consent of reversioner.

———*Alienation—Manager of joint family=Necessity—Criminal litigation.*

Expenses for defence of the manager against a criminal charge are not necessity. Such money may be spent by the manager with the consent of other members. (*Chapman and Roe*, JJ.) NATHU RAI *v.* DIN DAYAL RAI. **39 I.C. 665=2 Pat. L.J. 166.**

———*Alienation—Manager of joint family—Necessity—Litigation.*

Prosecution of one member of joint family, is not such a necessity as would justify alienation of the whole joint family property. (*Pratt*, J.C. *and Crouch*, A.J.C.) MOTU MAL *v.* JAVERMAL. **19 I.C. 908=6 S.L.R. 265.**

———**Alienation—Widow.**

COMPROMISE.
CONSENT OF REVERSIONER.
CO WIDOWS.
CUSTOM.
DEBTS.
DUTY OF LENDER.
GIFT.
MAINTENANCE.
MORTGAGE.
NECESSITY.
RELINQUISHMENT.
RIGHTS OF ALIENEE.
SETTING ASIDE.
SURRENDER.
TRANSFER OF RIGHTS, TITLE AND INTEREST.
WILL.

Alienation—Widow—Compromise.

———*Alienation — Widow— Compromise—Distinction between.*

If a question arises whether a transaction is an alienation or compromise or a doubtful claim, a test is to see whether the alienee derives title from the limited owner. If the transaction recognises an antecedent title of one kind in both the parties as the agreement acknowledges and defines what that title is; the transaction is not an alienation but a compromise of a doubtful claim which would be binding on the reversion 27 C.L.J. 296, Foll.; 33 All. 356; 40 All. 487. Dist. (*Dass and Bucknill*, JJ.) BHAGWATI KUAR *v.* JAGDAM SAHAY. **62 I.C. 933=2 Pat L.T. 471.**

Alienation--Widow--Consent of Reversioner.

——*Alienation—Widow—Consent of reversioner—Distinction between—Test of—Reversioner taking mortgage from alienee, if estopped.*

HINDU LAW—Alienation—Widow—Consent of reversioner.

There is a distinction between the power of a Hindu widow to surrender or relinquish the estate of her deceased husband and her power to alienate it for necessity. She can surrender her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time, but the surrender must be *bona fide*, not a device to divide the estate with the reversioner. In this case the question of necessity does not arise. If the widow alienates the whole property and all the nearest reversioners consent, then the alienation falls under this head of surrender. When the alienation of the whole or part of the property is to be supported on the ground of necessity, then if actual necessity or *bona fide* enquiry and belief by the alienee is not proved *aliunde*, the consent of such reversioners as might fairly be expected to object would be presumptive proof which if not rebutted by contrary proof, will validate the transaction as a right and proper one. 30 All. 1. P.C., Dist. Where a Hindu widow transferred property to an alienee from whom a prospective reversioner takes a mortgage of a portion of the property, the reversioner is not estopped from disputing the validity of the alienation on the death of the widow. (*Lord Dunedin*) RANGASWAMI GOUNDAN *v.* NACHIAPPA GOUNDAN. **42 Mad 523=36 M.L.J. 493=17 A.L.J 536=29 C.L.J 539=21 Bom. L.R. 640=10 L.W. 105=28 C.W.N. 777=(1919) M.W.N. 262=26 M.L.T. 6=50 I.C. 498=46 I.A. 72 (P.C.).**

[Reversing 26 I.C. 767=28 M.L.J. 1.]

———*Alienation — Widow — Consent of reversioner—Reversioner joining in conveyance —Effect of—Duty of purchaser—Reversioner subsequently succeeding—Estoppel—Transfer of Property Act, S.* 43.

It lies on a purchaser from a Hindu female to acquaint himself with the extent of her powers. A reversioner with a mere expectancy who joins in the conveyance by the limited owner cannot validate it, if it is otherwise invalid. The reversioner so joining is not estopped from denying the vendor's power to convey more than her life-interest unless the purchaser has been misled after enquiry. Except in that case therefore, the conveyance does not operate on any interest acquired after the vendor's death, by the reversioner joining in the conveyance. (*Mr. Amir Ali.*) GUR NARAIN *v.* SHEO LAL SINGH. **46 Cal. 565=46 I.A. 1=17 A.L.J. 66=36 M.L.J. 63=9 L.W. 315=23 C.W.N. 521=49 I.C. 1=1 U.P.L.R. 1 (P.C.).**

[On appeal from 7 I.C. 218].

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

An attestation proves no more than that of the signature of the executant has been affixed to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed or affect him with notice of its provisions. It might, at least, be material for cross examining the witness as to his knowledge of the transaction. It does not, by itself, create an estoppel nor imply consent. (*Lord Chancellor*). NANDLAL *v.* JAGAT KISHORE ACHARJYA. **44 Cal. 186=20 M.L.T. 335=31 M.L.J 563=(1916) 2 M.W.N. 386=4 L.W. 458=18 Bom. L.R 868=14 A.L.J 1103=24 C.L.J. 467=1 P.L.W 1=21 C.W.N. 225=10 Bur. L.T. 177=36 I.C. 420=43 I.A. 219 (P.C.).**

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of—No estoppel.*

To be valid as against the reversioners or affect their reversionary rights, a charge created by Hindu widow or an alienation effected by her can be supported only by proof *aliunde* that such debt was contracted for valid and legal necessity, and the onus of establishing such necessity rests heavily on those who claim the benefit of the transaction. The requirement of the law may, however, be fulfilled by proving the consent or concurrence of the reversioners to or in the transaction. But such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interest; and such consent should not be inferred from ambiguous acts or be supported by dubious oral testimony. The consent must be of all those who are likely to be interested in disputing the transaction. Mere attestation of a deed does not necessarily import consent to an alienation effected by it and does not estop the reversioner from impeaching it. (*Mr. Amir Ali*). HARI KISHEN BHAGAT *v.* KASHI PRASAD SINGH. **42 Cal. 876=42 I.A. 64=17 M.L.T. 115=19 C.W.N. 370=13 A.L.J 223=2 L.W. 219=21 C.L.J. 225=28 M.L.J. 65=17 Bom. L.R. 426=27 I.C. 674=(1915) M.W.N. 11 (P.C.).**

———*Alienation — Widow — Consent of reversioners—Family settlement—Necessity.*

A Hindu widow, at a time when the estate was in serious peril, came to an arrangement with the reversioners whereby she demised the estate to the several reversioners or their representatives for a term of 60 years (she being then 42 years of age) and reserved to herself only a small income representing a bare maintenance. The plaintiffs, the actual reversioners and the sons of one of the ijaradars, had for a period of 11 years preceding the death of the widow acted up to the terms of the said arrangement and took benefits thereunder, but, subsequently, on the death of the widow brought a suit for possession of some of the properties demised on the ground that the arrangement above set forth was fraudulent and not supported by any legal necessity and so not binding upon them. *Held*, that the arrangement impugned was legal and binding

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upon the plaintiffs, that their conduct amounted, to an admission that the said arrangement was made in good faith and was supported by a necessity and that the suit must in consequence be dismissed. Great weight is to be attached to the sanction by expectant reversioners of an alienation of property as affording evidence of the property of the alienation. (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **41 Cal. 793 = 18 C.W N 673 = 12 A.L J. 711 = 19 C.L J. 620 = 16 Bom. L.R. 425 = 16 M.L T 68 = 27 M.L J. 123 = 1 L.W. 533 = 23 I.C. 162 = (1914) M.W.N. 430 (P.C.).**

——*Alienation—Widow—Consent of reversioner—Presumption.*

The fact that the immediate reversioner consented at the time of the transfer by a Hindu widow, would raise a presumption in the absence of evidence to the contrary, of legal necessity but the legal necessity relied upon must be such as under the Hindu Law would justify a transfer. (*Stuart and Sulaiman*, JJ.) UDAI BHAN SINGH *v.* GAJENDRA SINGH. **L.R. 3 A. 376 = 1923 All. 28.**

——*Alienation — Widow — Consent of reversioner.*

In the case of a mortgage by a Hindu widow or other female limited owner, effected with the consent of such of the next reversioners as are capable of giving consent, if legal necessity is not proved and the alienee does not prove reasonable enquiry on his part, the consent of such reversioners is a presumptive proof, which, if not rebutted, will validate the transaction. (*Tudball and Sulaiman*, JJ.) BHUP SINGH *v.* JHAMMAN. **19 A L.J. 881 = 1922 All. 169.**

——*Alienation—Widow—Consent of reversioner—Proof of necessity.*

In the case of an alienation by a Hindu widow if it is proved that the consent of the immediate reversioners had been obtained, it raises a strong presumption of the existence of legal necessity for the transfer, which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. 30 A. 1 ; 36 M.L.J. 493, foll. (*Tudball and Sulaiman*, JJ.) HARJAN RAI *v.* MAHABIR TEWARI. **64 I.C. 474.**

——*Alienation—Widow—Consent of reversioner.*

A transfer by a widow for no necessity is beyond her power and even if the next reversioner joins in the transfer it will not bind the reversioners more remote. (*Mears*, C.J. *and Bannerjee*, J.) GHISIAWAN PANDE *v.* RAJ KUMARI. **43 All. 534 = 63 I.C. 556 = 19 A.L.J. 476.**

——*Alienation—Widow—Consent of reversioner—Estoppel.*

A reversioner of a Hindu widow estops himself from asserting a transfer by her as illegal

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and without necessity when he personally consents to it and acts for the vendee to acquire a portion sold. The strong presumptive evidence of legal necessity is the consent of the nearest reversioner. (*Piggott and Walsh*, JJ.) MATA PRASAD SHUKUL *v.* DEVI SHUKULAIN. **58 I.C. 576 = 2 U.P.L.R. (All.) 59.**

——*Alienation—Widow—Consent of reversioners—Rights of.*

Where a Hindu widow transfers part of her estate which she cannot legally transfer, the reversionary heirs can seek their remedy for the recovery of the estate, but cannot claim to be reimbursed for anything done by her in violation of the right which she possessed. (*Bannerjee and Sulaiman*, JJ.) JWALA PRASAD *v.* SUKHDEI. **57 I.C. 59 = 2 U.P.L.R. (All.) 171.**

——*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

Mere attestation of an instrument by a reversioner does not necessarily import concurrence by him. From his mere subscription the inference does not necessarily arise that when he attested the document he fully understood what the transaction was and that he was the concurring party to it. The question whether the attestation of a document should be held to simply assent is a question of fact, and must be determined with reference to the circumstances of each case. (*Chamier and Piggott*, JJ.) LAKHPATI *v.* RAMBODH SINGH. **37 All. 350 = 29 I.C. 218 = 13 A.L.J. 616.**

——*Alienation—Widow—Consent of reversioner—Rights of remote reversioner.*

Alienation to three out of the four nearest reversioners and assented to by the other cannot be impeached by the remote reversioner. (*Bannerjee and Chamier*, JJ.) SURABALE SINGH *v.* BIRTHU. **24 I.C. 482.**

——*Alienation—Widow—Consent of reversioner—Effect of.*

An alienation by a widow with the consent of immediate reversioner cannot be questioned by the next reversioners at the widow's death, even though no necessity is proved. Attestation is evidence of knowledge of the nature of transaction. 30 All. 1. (P.C.), Foll. (*Bannerjee*, J.) ISMAIL JODAHA *v.* JAGANATH. **19 I.C. 255.**

——*Alienation—Widow—Consent of reversioner—Gift—Estoppel.*

A gift made by a widow with the consent of the reversioner is not valid and will have no effect beyond the lifetime of the widow. It is open to the reversioner at the time when the succession opens to dispute the validity of the gift and as one reversioner does not claim through another, his father's consent does not estop him from disputing the gift. (*Richards*, C.J. *and Bannerjee*, J.) SARNAM KUNWARI *v.* RAGUNATH KUNWARI. **16 I.C. 187.**

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———*Alienation—Widow—Consent of reversioner—Sale to next reversioner—Necessity.*

A sale by a Hindu widow to the nearest reversioner living at the time of the sale, is equivalent to a sale with the consent of the said reversioner and is, therefore, sufficient to pass good title independently of any direct evidence in support of the plea that the sale was for legal necessity. 30 All. 1; 35 Cal. 939; 19 Cal. 236; Foll. 21 Mad. 128; 31 Mad. 366, Diss. (*Piggot*, J.) SHEO DAS DUBE *v.* DALGANJAN DUBE. **15 I.C. 637.**

———*Alienation—Widow—Consent of reversioner—Effect of—Suit to set aside alienation by reversioner while retaining benefit—Estoppel.*

Where a widow alienates property with the consent of the next reversioner who gets a substantial benefit from the transaction it is not open to that reversioner or his descendants to impugn the alienation while retaining the the benefit. (*Macleod*, C J. *and Crump*, J.) BHAUSAHEB SHIDGAUDA *v.* RAMGAUDA ANNAGAUDA. **25 Bom. L.R 813 = 1923 Bom. 471.**

———*Alienation—Widow—Consent of reversioner—Reversioner joining in conveyance—Effect of.*

A Hindu widow and one of her daughters conveyed, under a deed of gift, portion of the family property to the sons of the daughter who had died. After the death of the widow, the daughter sued to set aside the gift: *Held*, that the deed of gift was good only for the life of widow and was bad as regards the transfer of the daughter'e interest to succeed to the reversioner. (*Macleod*, C.J. *and Heaton*, J.) BAI PARVATI *v.* DAYABHAI MANCHHARAM. **44 Bom. 488 = 58 I.C 266 = 22 Bom. L.R. 704.**

———*Alienation—Widow—Consent of reversioner—Necessity—Onus.*

In the case of an alienation by a Hindu widow as soon as the alienee on whom first the onus lies to show that alienation was for legal necessity proves that the reversioners have consented, the onus shifts to the person impeaching the alienation to show that there was no legal necessity. 42 Mad. 523 (P.C.) Rel. Where an alienation by a Hindu widow is attacked on the ground that she has sold more than what was justified by legal necessity the burden of proof lies on the plff to show that so much of the land as was required as the plff. says would suffice for the legal necessity could have been sold. Otherwise one is entitled to presume that the widow could not have sold less than she did in order to realise what was required. (*Macleod*, C J. *and Heaton*, J.) MADHAV KRISHNA DESHPANDE *v.* SHIDDAVA DANAPPA. **55 I C. 332 = 22 Bom. L.R.79.**

———*Alienation—Widow—Consent of next reversioners—Effect.*

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The consent to an alienation by widow, of the persons constituting the next reversion, whether male or female, is binding on the person eventually succeeding to the estate. 13 M.I A. 209; 5 Bom. 563; 25 Bom. 129, Ref. (*Scott*, C.J.) PURAMESWARI BAI *v.* RAGHAVENDRA CHIDANAND, **50 I.C 419 = 21 Bom. L R. 203.**

———*Alienation—Widow—Consent of reversioners.*

The consent of reversioners to a Hindu widow's alienation is only a factor in the proof of legal necessity. It is not sufficient to do away with all other proofs. 10 Cal. 1102, Dist. appr. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBHAI. **41 Bom. 93 = 37 I.C. 945 = 18 Bom L R. 954.**

———*Alienation—Widow—Consent of reversioner—Effect of.*

The question whether an alienation is validated by the reversioner's consent or not depends on the character and number of persons consenting and also on the nature and purpose of the alienation itself. The Court must be satisfied that the kinsmen to whose interest it was to make opposition did not oppose it. (*Beachcroft and Heaton*, JJ.) ABHESONG *v.* RAISAUG. **16 I.C. 531 = 14 Bom. L.R. 602.**

———*Alienation—Widow—Consent of reversioner—Effect of.*

The consent of nearest reversioner is not always sufficient to validate an alienation by a widow but in some cases such a consent not only raises a presumption as to the propriety of the alienation but also creates an estoppel against persons claiming under the reversioner. (*Scott*, C.J. *and Rao*, J.) RAMAKRISHNA KUPPUSWAMI *v.* TIRUPRABAI. **12 I.C. 529 = 13 Bom. L.R 940.**

———*Alienation—Widow—Consent of reversioner—Necessity—Reversioner joining in conveyance—Effect of.*

A conveyance jointly by a widow selling her widow's estate and the reversioner, his reversionary interest, is good and operative to convey the whole estate. 40 Cal. 72; Foll. (*Chaudhuri and Cuming*, JJ.) BHOLA NATH CHOWDHURI *v.* HARMANI DASI. **53 I.C. 42 = 30 C.L.J. 6.**

———*Alienation—Widow—Consent of reversioner—Partial alienation—Presumption of necessity—Estoppel.*

The doctrine of relinquishment and acceleration cannot apply to partial transfers by a limited owner, which can be supported only by legal necessity. The consent of the reversioner is merely strong presumptive evidence of the necessity. The propriety of an alienation with the consent of the next reversioner may come in question not only with reference to the conduct of the widow, whether or not she was justified by necessity, but also with reference to the conduct of the next reversioner whether

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or not his conduct was honest. If in the absence of legal necessity he engineered the transaction to suit his own ends and for his own immediate gain, his consent would lose all virtue. The transaction would stand no higher than a partial alienation in his favour and would have to be judged from that standpoint. Nevertheless, whatever might be said of the conduct of the widow or the next reversioner, the transferee, if he made due enquiry and acted *bona fide*, would still acquire a good title. Nor would the antecedent mismanagement of the estate effect him unless he was in some way a contributory party thereto. (*Richardson and Walmsley*, JJ.) SHYAMADAS ROY CHOWDHURY *v.* RHADHIKA PROSAD CHATTERJI. **22 C.W.N. 846=47 I.C. 653=29 C.L.J. 24.**

———*Alienation—Widow—Consent of reversioner—Consideration.*

The consent of reversioners to a mortgage by a Hindu widow raises a presumption or the existence of legal necessity even where a sum of money is paid to one of the reversioners for obtaining his consent. (*Chatterjee and Newbould*, JJ.) SYAM PEARY DASSAYA *v.* EASTERN MORTGAGE AND AGENCY CO., LTD, **40 I.C. 865.**

———*Alienation—Widow—Consent of reversioner.*

Per *Mookerjee*, J.—The concurrence of the reversioner raises a presumption that the alienation is made for a proper purpose. (*Jenkins*, C.J. *Mookerjee and Holmwood*, JJ.) UPENDRA NATH BOSE *v.* BINDESHRI PRASAD. **20 C.W.N. 210=32 I.C. 468=22 C.L.J. 452.**

———*Alienation—Widow—Consent of reversioners—Effect on.*

Alienation by widow in favour of a third party has not the effect of accelerating the estate and entitling the next reversioner to immediate possession. (*Chitty and Walmsley*, JJ.) SARABJIT PRATAP BAHADUR SAHU *v.* BHAGWAT KOERI. **30 I.C. 578**

———*Alienation—Widow—Consent of reversioner—Mortgage by conditional sale—Sale made absolute.*

A mortgage by conditional sale was made by a widow with the consent of the then next reversioner. It was made absolute by decree of Court before the right to object accrued to the actual reversioner, during the life time of the widow. *Held*, the actual reversioner could not impugn the alienation thereafter. 40 Cal. 721, Rel. (*Holmwood and Chapman*, JJ.) SHIBA SUNDARI DASI *v.* RAM GOVINDA DAS. **25 I.C. 90.**

——*Alienation—Widow—Consent of reversioners—Will.*

A widow though capable of transferring absolutely *inter vivos* property inherited from her husband with the consent of the next reversioner cannot make a testamentary disposition even with such consent. (35 I.A. 1, Ref.) (*Jenkins*, C.J. *and Mookerjee*, J.) DURGA SUNDARI *v.* RAMA KRISHNA. **21 I.C. 714=18 C.L.J. 162.**

[Affirming 12 I.C. 891.]

———*Alienation — Widow — Consent of reversioner—Effect of.*

Assent of the reversioner for an alienation of part of the estate by a Hindu widow is only evidence of the propriety of the transaction. Assent of the whole body of immediate reversioners to an alienation of the entire estate validates the alienation. (19. I.C. 273, Foll.) (*Mookerjee and Beachcroft*, JJ.) GOPESWAR MISRA *v.* GOPINI BAISHNABI. **17 C.W.N. 1062=21 I.C. 200=19 C.L.J. 318.**

——*Alienation—Widow—Consent of reversioner—Effect.*

The consent of a reversioner to an alienation by a Hindu widow cannot do more than raise a presumption of necessity. 5 Cal. 44, Not foll. 17 C.L.J. 499. Foll. (*Stephen and Mullick*, JJ.) NALEIN CHANDRA SHAHA *v.* HEM CHANDRA RAY. **20 I.C. 248=19 C.W.N. 265.**

———*Alienation—Widow—Consent of reversioners—Effect of.*

An alienation by way of mortgage by a Hindu widow of a portion of her husband's property without proof of legal necessity or reasonable enquiry, and honest belief as to its existence on the part of the mortgagee, but with the consent of the next reversioner for the time being, will be binding on the actual reversioner if the presumption of legal necessity and of reasonable inquiry and honest belief raised by such consent is not rebutted by more cogent proof. Cases reviewed. To uphold an alienation by a Hindu widow of her husband's estate, it should be shown (1) that there was legal necessity or (2) that the alienee after reasonable inquiry as to the necessity acted honestly in the belief that it existed or (3) that there was such consent of the next heirs as would raise a presumption either of the existence of necessity or of reasonable inquiry and honest belief as to its existence or (4) that there was a consent on the next heirs to an alienation capable of being supported by reference to the theory of surrender and the consequent acceleration of the interest of the consenting heirs, in which case the alienation must be of the whole estate with the consent of all the nearest reversioners. (*Jenkins*, C.J., *Harrington*, *Stephen*, *Mookerjee and Holmwood*, JJ.) DEBI PRASAD CHOWDHARY *v.* GOLAP BHAGAT. **40 Cal. 721=17 C.W.N. 701=19 I.C. 273=17 C.L.J. 499 (F.B.)**

———*Alienation—Widow—Consent of reversioner.*

Where it was found that though the husband of the widow left large landed property, the

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lands were unproductive and the widow unable to live on without borrowing, a mortgage created by her could not be said to be without necessity. Where a reversioner had attested the mortgages and had acted throughout as the attorney of the widow, he is estopped from challenging the alienation as having been made without consideration or necessity. (*Le-Rossignol and Wilberforce*, JJ.) ARURA *v.* SHIVDEV SINGH. **4 Lah. L.J. 43=1922 Lah. 61.**

———*—Alienation—Widow—Consent of reversioner—Implied.*

The fact that a reversioner cultivated the lands alienated by the widow under the vendee so long as the widow lived, does not estop him from claiming the properties on the death of the widow. (*Le-Rossignol and Wilberforce*, JJ.) BAHAR KHAN *v.* KISHEN CHAND. **52 I.C. 845=72 P.R. 1919.**

———*Alienation—Widow—Consent of reversioner—Presumption arising from consent and its rebuttableness.*

An alienation by a Hindu widow not justified by legal necessity is not valid even with the consent of the next reversioners unless the consent gives rise to a presumption of the existence of the necessity or reasonable enquiry and honest belief as to its existence. The presumption is rebuttable by cogent proof of the absence of lawful necessity. (*Shadi Lal and Broadway*, JJ.) TARA CHAND *v.* KHASIRAM. **17 P.R. 1917=9 P.W.R. 1917= 39 I.C. 121=71 P.L.R. 1917.**

———*—Alienation — Widow—Consent of reversioners—Life interest in the property.*

There were three brothers holding an estate in equal shares. On the death of one of them, his widow succeeded to a life interest in her husband's share of the estate. A part of the estate was acquired by Government under the Land Acquisition Act and the widow's share of the purchase money was paid to her with the consent of her brothers-in-law. Their minor sons presented the suit for declaration that the widow is only entitled to use by way of maintenance the income of the sum which she received as compensation and that after her death plaintiffs shall be entitled to the capital and on injunctions restraining the defendant from using the capital during her life time. Both the lower Courts upheld the plaintiff's cause, hence the defendant lodged a second appeal to the Chief Court. *Held*, (1) the question of consent is of fact, and hence they are not estopped from suing by their father's *bona fide* consent. (2) that the mere fact their fathers consented to allow the widow to receive compensation in cash, provides the plaintiffs with no cause of action provided that the welfare of the estate has not been threatened by the widow. Yet in view of the fact that the defendant asserted that the plaintiff had no right in the property and she had set

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up an absolute title the plaintiffs have cause of action. (*Rattigan and Leslie Jones*, JJ.) SARDAR BEGUM *v.* MAHAMMAD SHARIF. **63 P.R. 1916=160 P.W.R. 1916= 35 I.C. 555=3 P.L.R. 1917.**

———*Alienation—Widow—Consent of nearest reversioner—Effect on remote reversioner.*

The consent of the nearest reversioner to an alienation by a Hindu widow of her husband's estate, does not always validate the alienation and debar the remote reversioners from contesting it. 40 Cal. 721, Rel. on. (*Shah Din and Scott-Smith*, JJ.) DEVIDAS *v.* RAJA KHAN. **209 P.L.R. 1914=91 P.R. 1914= 24 I.C. 417=150 P.W.R. 1914=**

———*—Alienation—Widow—Consent of reversioners—Effect of.*

An alienation by a Hindu widow with the consent of the nearest reversioners given in good faith and with due regard to the interests of the family is binding on the remote reversioners. (*Johnstone and Rattigan*, JJ.) TAKECHAND *v.* GOPAL DEVI. **46 P.R. 1912= 127 P.L.R. 1912=13 I.C. 482= 180 P.W.R. 1912.**

———*—Alienation—Widow—Consent of reversioner—What passes.*

A conveyance by a widow and the next heir can only transfer the interest of the party in possession and no more. (*Spencer and Seshagiri Aiyar*, JJ.) KUNJARU VENKATARAMANAYYA *v.* DEJAPPA KONDE, **22 M.L.T. 233= (1917) M.W.N. 679=6 L.W. 530= 42 I.C. 540=34 M.L.J. 319.**

———*Alienation—Widow—Consent of reversioner—Effect.*

The consent of nearest presumptive reversioner is only presumptive evidence of justifiability and does not render the transaction unimpeachable by the actual reversioner. 30 All. 1 P.C.; 28 M.L.J. 1, Foll.; 42 Cal. 876 P.C. Expl. (*Seshagiri Aiyar and Napier*, JJ.) KONDAPPALLI PARASURAMAREDDI *v.* MATEREDDI VENKAYYA. **6 L.W. 250= 42 I.C. 496=22 M.L.T. 260.**

———*—Alienation—Widow—Consent of reversioner—Estoppel.*

Where a Hindu reversioner and his son sued to set aside an alienation by the widow and the father was found to have expressly consented to the alienation knowing the nature of the transaction. *Held*, that the father could not dispute the validity of the alienation. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATA RAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30=38 I.C. 270= 5 L.W. 482.**

———*—Alienation—Widow—Consent of reversioner — Surrender — Remote reversioner — Consent of the next female reversioner not obtained—No consent even after alienation.*

Two co-widows gave their interests in the property of the deceased husband to the daughters

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son of one of them, the other widow consenting to the relinquishment in exchange for an absolute interest in a portion of the property. The daughter who was the immediate reversioner was not shown to have consented to the widow's action either at the time of relinquishment or afterwards. *Held*, the property did not pass to the daughter's son. The relinquishment does not amount to surrender because it was not of the whole estate, one of the widows having secured an absolute estate in a portion of the property in lieu of her half share in the whole, and because it was not in favour of the daughter, the nearest reversioner at the time. The relinquishment is not an alienation made with the consent of the whole body of the reversioners, for the daughter did not consent to the relinquishment, nor were the other expectant reversioners, shown to have consented. *Abdur Rahim*, J.—The consent of substantially the whole body of expectant reversioners is as sufficient as legal necessity, to validate an alienation though such consent was given after the transaction and for consideration. Per *Srinivasa Aiyangar*, J.—The consent of the kindred is, where evidence of actual necessity is lost by lapse of time, very valuable evidence, also when the *bona fides* of alienee are doubtful, the consent of the reversioners to the transfer alleged to be a transfer for legal necessity, may, unless rebutted, be sufficient proof. Consent unless given *bona fide* and without being purchased is useless. 8 M. I.A. 529, Foll. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) MULUGU KOTAYYA *v.* MUDIGONDA CHANDRA MOWLI SASTRI. **31 M L J 406 = 20 M.L.T. 148 = (1916) 2 M W.N. 137 = 36 I.C. 407 = 4 L.W. 149.**

——*Alienation—Widow—Consent of reversioner—Gift.*

The rule of caveat emptor does not apply in alienation by widow and it cannot be presumed that only life-estate is conveyed. 31 M.L.J. 92, Ref. *Quære.*—Whether consent of reversioners will validate gift by widows. (*Coutts Trotter and Seshagiri Aiyar*, JJ.) VEERAKKAL *v.* THIRUMAKKAL. **34 I.C. 596.**

——*Alienation — Widow — Consent of reversioner—Evidence of necessity.*

The consent of the nearest reversioner to a partial alienation by a Hindu widow is only evidence of necessity for the alienation and is not conclusive evidence of the validity thereof. 30 All. 1, Expl.; 21 Mad. 128, Foll. (*Coutts-Trotter and Seshagiri Aiyar*, JJ.) MALLA SURIAH *v.* CHOUDHARI SURAN NAIDU. **19 M.L T. 239 = 32 I C. 993 = 3 L.W. 278.**

——*Alienation—Widow—Consent of reversioner—When presumed.*

A reversioner's consent to an alienation of a widow's estate will be presumed if his subsequent acts show that upon an intelligent understanding of the nature of his dealings, he concurred in binding his interests as reversioner, and the reversioner in such a case, will be estopped from disputing the alienation. 28 M.L.J. 1; 42 Cal. 876, Ref. (*Ayling and Phillips*, JJ.) VENKATASUBBA AIYAR *v* MUTHUSWAMI AIYAR. **(1916) M.W.N. 123 = 31 I C. 487 = 18 M.L T. 521.**

——*Alienation—Widow—Consent of reversioner—Effect.*

Consent by a reversioner to an alienation made by a Hindu widow by itself makes the transaction valid, and is not merely presumptive and rebuttable evidence of necessity. 30 All. 1; 28 M.L.J. 1, Ref. (*Sadasiva Aiyar and Napier*, JJ.) SOUTH INDIAN EXPORT CO., LTD. *v.* T. R. SUBBIER. **(1915) M.W.N. 483 = 29 I.C. 987 = 28 M L.J. 696.**

[This is no longer law. 50 I C. 498 = 42 Mad. 523.]

——*Alienation—Widow—Consent of reversioner—Effect.*

The onus of proving that a charge created by the widow is binding on the reversioners, lies heavily on the persons who claim the benefit of the transactions and when the only evidence let in was that a series of documents executed by the widow, attested by the reversioners and the widow had been maintaining a large number of persons, related to her but not relating to the husband's family. *Held*, the evidence was insufficient to prove necessity. 19 C.W.N. 370, Foll. (*Wallis*, C.J. *and Tyabji*, J.) PANDA PATYYA *v.* PANDA VENKAMMA. **17 M L T. 393 = 29 I C 54 = 2 L.W. 455.**

——*Alienation — Widow — Consent of reversioner—Effect of.*

The effect of the consent of the next reversioner to an alienation by the widow is that it makes it conclusive. And Courts are bound to presume the validity of the alienation made with the consent of the next reversioner. But such a presumption does not arise when a reversioner accepts a conveyance in his own favour. The doctrine of validation by assent is based on the doctrine that a person may well be presumed not to act against his interest. The assent also raises an estoppel against the person assenting. The assent or ratification by the next reversioner need not be at or before the date of the alienation. It is enough if he ratified the transaction. 30 All. 1 (P.C.), Ref. (*Wallis*, O.C J., *Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NACHIAPPA GOUNDAN *v.* RANGASWAHI GOUNDAN. **17 M L T. 87 = 2 L.W. 69 = 28 M.L J. 1 = 26 I.C 757 = (1915) M.W.N. 88 (F.B.).**

[Reversed on appeal 50 I C. 498 = 42 Mad. 523.]

——*Alienation—Widow—Consent of reversioner—Effect.*

The consent of a reversioner given, not at the time of the alienation by the widow but

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in the course of a suit is not sufficient to pass full title to alienee. 23 W. R. 214, Foll. (*Sadasiva Aiyar and Hannay*, JJ.) LAKSHMINARAYANA AIYAR *v.* ULAGAMMAL.
26 I.C. 528=28 M L J. 256.

———*Alienation—Widow—Consent of reversioner—Effect of.*

Consent of the next reversioner to an alienation of portion of the estate will not validate the alienation so as to bar the right of remote reversioners to question the alienation. The principle is the same even if the alienation is of the whole. (*Oldfield and Seshagiri Aiyar*, JJ.) MEENAKSHI *v.* MUNIANDI PANNIKKAN.
38 Mad. 1144=1 L.W. 704=(1914) M.W.N. 672=16 M L.T. 270=25 I.C. 957=27 M.L J. 353.

———*Alienation — Widow — Consent of reversioner*—Bona fide.

The consent of the reversioner which validates an alienation by the widow must be *bona fide* one, whether the alienation is partial or total. (*Ayling and Seshagiri Aiyar*, JJ.) RAMA KAVUNDEN *v.* KURUTHASWAMY NAICK. **16 M.L.T. 251=25 I.C. 951=(1914) M.W.N. 797.**

———*Alienation—Widow—Consent of reversioner.*

A Hindu widow may alienate the whole estate with the consent of the next reversioner for consideration. No question of necessity arises. 40 Cal. 721; 27 M.L.T. 123, Dist. (*Wallis and Oldfield*, JJ.) ADAIKKA MAISTRY *v.* MUTHUSWAMI AMBALAGARAN.
25 I.C. 144=27 M.L.J. 24.

———*Alienation—Widow—Consent of reversioner—Relinquishment—Consideration— Gift and sale—Estoppel.*

A reversioner may be estopped by his consent, given for consideration from contesting a Hindu widow's future alienations. 31 Mad. 366, Foll. *Held*, (*Per Sundara Aiyar*, J.) The reversioner in the case was estopped from contesting a gift by a widow to her adopted son whose adoption was invalid by reason of a relinquishment deed he executed to the widow prior to the date of the gift. It did not matter that the term of the deed of relinquishment itself did not show that any alienations were contemplated. There is no distinction in the applicability of the rule with reference to alienations for consideration and alienations for no consideration. (1913) M W.N. 758, Foll. *Per Sadasiva Aiyar*, J.—Nor is there any warrant for any distinction between alienation of part and alienation of the whole estate; consent to future alienations stands on the same footing as ratification of past alienations. There is no distinction between an alienation by the widow to third persons with the reversioner's consent and a relinquishment by the reversioner to the widow herself thereby conferring on her an absolute estate. The distinction is not sound and cannot be

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supported on a proper legal basis. 30 All. 1, Ref. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) RAGUPATHI *v.* KANNAMMA.
23 M.L J. 363=12 M.L.T. 325=16 I.C. 710=(1912) M.W.N. 1223.

———*Alienation— Widow— Consent of a reversioner—No consideration— Alienation of whole and of part—Difference.*

If the next reversioner, either at the time of the alienation or thereafter, consents to or ratifies the transaction, such transaction cannot be re-opened by the person who is the nearest reversioner at the time of the widow's death. The consent of the person entitled to the reversion would by itself validate the alienation irrespective of any question of legal necessity. 30 All. 1, Appl.; 31 Mad. 336, Ref. The above rule is not restricted to cases in which the alienation by the widow was made for consideration, though not for legal necessity. 34 Bom. 165, Diss. *Quare.* Whether alienation of a portion of the husband's estate by the widow when there is no justifying necessity could be validated by consent of the next reversioner. 32 Mad. 206; 31 Mad. 366, Ref. (*Abdur Rahim and Ayling*, JJ.) KUPPIER *v.* KOTTA CHINNARAMIER. **16 I.C. 493=(1912) M.W.N. 758.**

———*Alienation—Widow—Consent of reversioner—Effect.*

Consent of the body constituting the reversion, who would be interested in disputing the alienation, affords good evidence that the transfer was in fact made for justifying cause, *i.e.*, legal necessity. 11 Bom. L.R. 1291; 4 I.C. 584, Ref. Reversioners' consent to an alienation is strong evidence of the necessity for such alienation and also estops them from disputing such alienation. 17 Cal. 896, Dist. (*Benson and Sankaran Nair*, JJ.) KRISHNA AIYAR *v.* SAMBASIVA SASTRIGAL. **11 I.C. 24.**

———*Alienation—Widow—Consent of reversioner—Effect.*

An alienation by widow with the consent of the next reversioner at the date of the alienation cannot be questioned by the next reversioner on the widow's death. (*Abdur Rahim and Ayling*, JJ.) KUPPIER *v.* KOTA CHINNASWAMIER. **9 M.L.T. 356=10 I.C. 421=22 M.L J 488.**

———*Alienation—Widow—Consent of next reversioner—Effect.*

A Hindu widow is competent to alienate with the consent of the next reversioner (male) and the alienation cannot be challenged by a remote reversioner, who, at the time, wae a minor. (*Drake-Brockman*, J.C.) NATHURAM *v.* SAKHAWATALI. **57 I C. 639.**

———*Alienation—Widow—Consent of reversioner, effect of—Presumption.*

An alienee from a Hindu widow must prove by evidence that the widow was in need of money at the time of the alienation and that

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he made enquiries as to the necessity for the loan. The mere presence of the reversioner at the time of the payment of the consideration for the sale to the widow does not raise a presumption of necessity. But the vendee may prove that the presence of the reversioner and his conduct amounted to a representation of necessity which he *bona fide* believed. (*Dalal*, A.J.C.) SHEOAMBAR KHAN *v.* BALKARAN SINGH. **8 O.L.J. 619=1922 Oudh 112.**

———*Alienation--Widow—Consent of reversioner—Evidence of necessity—Question of fact.*

In the case of an alienation by a Hindu widow the consent of the male reversioners is presumptive evidence of legal necessity depends on the facts of each case. (*Wazir Hasan*, A.J.C.) RAM BODH SINGH *v.* RAM NARAYAN SINGH. **4 U.P.L R. (J.C.) 3=65 I.C. 776= 8 O.L.J. 512.**

———*Alienation—Widow—Consent of reversioner—Perpetual line.*

A Hindu widow has power, apart from legal necessity to alienate her husbands' estate with the concurrence of the next reversioners. But ordinarily the consent of the whole body of the persons constituting the next reversion should be obtained. Where a permanent lease was granted by a Hindu widow without such consent, *held*, that though the lease was not binding on the reversion, the lessee does not become a trespasser on the death of the widow. (*Kanhaiya Lal*, A.J.C.) CHAWHAN *v.* RAM SARUP. **20 O.C. 232=42 I.C. 27=4 O.L.J. 536.**

———*Alienation—Widow—Consent of reversioner--Necessity—Presumption— Attestation—Effect of.*

The consent of the nearest reversioners to an alienation by a Hindu widow if proved to have been given with a full knowledge of the facts, raises a strong presumption of legal necessity or of circumstances which would have led a *bona fide* enquirer to believe in the existence of necessity. Mere attestation does not imply consent. (*Lindsay*, J C.) BALWANT *v.* RAM DAT. **44 I.C. 611=4 O L J. 711.**

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

Mere attestation does not imply knowledge or consent. The consent of reversioners to a transfer by a widow may operate as evidence of legal necessity or of the transfer being justifiable. The reversioners of a Hindu widow do not claim under each other and therefore one of them cannot by consent to the transaction of the Hindu widow dispose of other's interests. The reversioners have only a *spes successionis* which cannot be transferred. (*Lindsay and Rafique*, A.J.Cs.) MATHURA PRASAD *v.* JAGATBAHADUR SINGH. **18 I.C. 289.**

———*Alienation—Widow — Reversioners—Right of to set aside—Limitation.*

A gift of an absolute estate by a Hindu widow is not binding on the reversioner and he can

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elect to treat it as a nullity and sue for possession at any time within 12 years of his interest becoming vested without first suing to have it set aside notwithstanding Art. 91 of the Limitation Act. (*Miller*, C.J. *and Mullick*, J.) MAHARAJAH KESHO PRASAD SINGH *v.* CHANDRIKA PRASAD SINGH. **2 Pat. 217=1923 P. 122.**

———*Alienation—Widow—Consent of reversioner—Necessity, proof of.*

The consent of an immediate reversioner to an alienation by a Hindu widow is presumptive proof of legal necessity and the consenting reversioner cannot challenge the legal necessity. (*Das and Adami*, JJ.) ADHIKARI KUER *v.* LOKENATH RAI. **1 Pat. L.T. 335= 56 I.C. 426=2 U P.L.R. (Pat.) 93.**

Alienation—Widow—Co-widows.

———*Alienation — Widow — Co-widows—Will.*

Where co-widows divided their property and agreed not to challenge alienation by gift sale or otherwise by each other, *held*, that a will by one could not be challenged by the other, 14 M.L.J. 175, Dist. (*Benson and Sundara Aiyar*, JJ.) PACHATAIAMMAL *v.* ELUVAN CHETTI. **10 I.C. 386=(1911) 1 M.W N. 311.**

———*Alienation—Widow—Co-widows.*

One of two co-widows can alienate for her life, her share in the estate inherited from her husband, whether before or after partition. The alienation will be binding on the other and would defeat her rights of survivorship, if she consented to it. (*Drake-Brockman*, J C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRA BHAGA. **34 I C. 673=12 N L.R. 100.**

Alienation—Widow—Custom.

———*Alienation — Widow — Custom—Presumption.*

The mere fact of alienation by a widow will not raise a presumption that she is doing so by reason of a special custom. If an out-and-out transfer has been allowed to pass unchallenged by those who have a right to challenge that may raise a slight presumption as to custom. (*Kendall*, A.J.C.) RAM DAT *v* SUKHIA. **23 I.C. 869=1 O L.J. 470.**

Alienation—Widow—Debts.

———*Alienation—Widow--Debts — Decree debt.*

A genuine sale effected by a Hindu widow of an immoveable property in satisfaction of a mortgage decree is binding on the reversioners. (*Sir John Edge*). MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR TEVAN. **16 L.W. 478=4 U.P.L R. (P.C.) 92= (1922) M.W.N. 804=27 C.W.N. 365= 21 A.L J. 282=31 M.L.T 149= 1922 P.C. 307 (P.C.).**

———*Alienation—Widow—Husband's debts—Agreed to be paid by deceased's relative—Alienation for.*

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Where the relatives of the deceased husband undertook to pay off the husband's debts but did not pay, the widow would not be justified in alienating the husband's property to pay off these debts. The legal and pious duty of the widow is at an end when the relative undertakes to pay and thereby the debt ceases to be the debts of the deceased or his widow. (*Richards*, C.J. *and Bannerjee*, J.) NATHAN *v.* THULASA. **45 I.C. 728=16 A.L.J. 443.**

———*Alienation—Widow—Debt of husband—Interest*—Bona fide *purchaser.*

A widow is not bound to discharge her husband's debts from the income of his estate but must pay therefrom the interest on the debts, as she is entitled only to the real net income from the properties. A purchaser will however not be affected by the fact that the widow could have discharged the interest from the income. If there was actual pressure on the estate, or if the creditor after *bona fide* inquiry believed that there was necessity, the sale must be upheld. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) BODSU JAGGAYYA *v.* GOLI APPALA RAJU. **18 I.C. 953=(1913) M.W.N. 275.**

———*Alienation—Widow—Debt—Consideration exceeding debt.*

The mere fact that the amount obtained by sale by a Hindu widow for discharging a legal debt, exceeds by 1/6 the amount due under such debt, does not render the sale liable to be set aside on payment of the purchase money. (*Hallifax*, A.J.C.) ANANDRAO *v.* SARASWATI BAI. **6 N.L.J. 115=1923 Nag. 125.**

Alienation—Widow—Duty of Lender.

———*Alienation—Widow—Duty of lender—Onus of proving legal necessity on the purchaser.*

The onus of supporting a sale from a Hindu widow is undoubtedly on the purchaser, and he must adduce evidence to prove legal necessity as would bind the husband's estate. Recitals in mortgages or deeds of sales with regard to the existence of necessity for the alienation can never be treated as evidence by themselves of the fact and to substantiate the allegation there must be some evidence *aliunde*. (*Ameer Ali.*) LALA BRIJ LAL *v.* INDA KUNWARA. **26 M.L.J. 442=8 C.W.N. 649=12 A.L.J. 493=36 A. 187=19 C.L.J. 460=(1914) M.W.N. 405=16 M.L.T. 395=16 Bom. L.R. 352=23 I.C. 715=1 L.W. 794.**

Alienation—Widow—Gift.

———*Alienation—Widow—Gift to son-in-law of entire property to induce him to marry—Validity.*

A Hindu widow has for certain purposes a clear authority to dispose of her husband's property and she might do it for religious purposes which included dowry to a daughter. Although as a general rule such dowry shall not exceed "a quarter" the words "quarter" simply enjoins the allowance of as much as will suffice for the marriage. A gift of the whole property of small value will be held valid after her lifetime. 37 Cal. 1 and 22 Mad. 113, Referred to. (*Ryves*, J.) BHAGWATI SHUKUL *v.* RAM JATAN TEWARI. **1922 All. 381.**

———*Alienation—Widow—Gift—Consent of reversioner.*

Where a widow made a gift of her husband's property with the consent of her husband's mother in favour of the nearest reversioners next to the mother, the gift is binding on the mother and no question of transfer of expectancy arises. 30 All. 1, Foll. (*Knox*, J.) JAMNA KUNWAR *v.* RAMAHIT SINGH. **28 I.C. 496.**

———*Alienation—Widow—Gift to daughter having sons—Effect.*

A gift by a widow to a daughter having sons amounts in reality to no more than to a relinquishment by the widow of her interest in her husband's estate. (*Richards*, C.J. *and Bannerjee*, J.) MUSSAMMAT GOWRI *v.* GOPAL. **25 I.C. 503.**

———*Alienation—Widow—Gift—Consent of next reversioner.*

A gift by a Hindu widow in favour of a possible reversioner, with the consent of the person who would have taken the estate if she had died at the time is invalid. 30 All. 1, Dist; 32 All. 176; 34 All. 129, Rel. (*Richards*, C.J. *and Bannerjee*, J.) BENI MADHO SINGH *v.* JAGAT SINGH. **16 I.C. 337=10 A.L.J. 33.**

———*Alienation—Widow—Gift.*

A gift by a widow of the property inherited from her husband with consent of presumptive heir does not bind the actual reversioner. (*Karamat Husain and Chamier*, JJ.) ABDULLA *v.* RAM LAL. **34 All. 129=12 I.C. 601=8 A.L.J. 1318**

———*Alienation—Widow—Gift—Charity.*

A Hindu widow has no power to make an endowment of her husband's property except for purposes conducing to the spiritual welfare of the husband. (*Stanley*, C.J. *and Bannerjee*, J.) SOHAN BIBI *v.* SRAN BIBI. **10 I.C. 230.**

———*Alienation—Widow—Gift—Religious or charitable purposes.*

Under the Hindu Law a gift by a widow for the religious benefit of her husband is invalid if it be a gift of the whole or of practically the whole of the husband's property. 22 Cal. 506; 34 Mad. 288; 6 B.H.C.R. 1, Ref. (*Batchelor*, A.J.C. *and Shah*, J.) PANACHAND *v.* MANOHAR LAL. **42 Bom. 136=43 I.C. 729=20 Bom. L.R. 1.**

———*Alienation—Widow—Gift—Daughter.*

A gift by widow at the time of daughter's marriage conduces to the spiritual benefit of the deceased husband and is valid and binding on the reversion. (*Batchelor and Heaton*, JJ.) ABHESANG *v.* RAISANG. **16 I.C. 561=14 Bom. L.R. 602.**

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——*Alienation—Widow—Gift—Charitable purposes.*

A Hindu widow cannot make unrestricted dispositions in charity though gifts to Brahmins and idols to a small extent may be binding on the reversion. 22 Cal. 506, Ref. (*Mookerjee and Beachcroft*, JJ.) LACHMI PROSAD CHOUDHURY *v.* JAGMOHAN LAL CHOUDHURY. **22 I C. 594=18 C.L J. 633.**

——*Alienation — Widow —Gift—Religious purposes.*

A widow has a very limited power of alienation for religious purposes and that only when it would conduce to the spiritual welfare of her deceased husband and not of herself. Her powers to alienate for her son's spiritual welfare the property got as heir to her son are more limited. Installation of an idol and endowment of a temple do not come within the category of acts conducive to the spiritual benefits of the deceased husband. 2 W.R (P.C.) 59; 22 Cal. 506, Rel. (*Harrington and Carnduff*, JJ.) HAR MANJE NARAIN SINGH *v.* RAM GOPAL ACHARI. **19 I.C. 417=17 C.W.N. 782.**

——*Alienation—Widow—Gift.*

A Hindu widow cannot make a valid gift of the husband's property without the consent of the reversioners. (*Rattigan and Scott-Smith*, JJ.) DIWAN CHAND *v* JIWAN MAL.
135 P L.R. 1915=26 I.C. 910=222 P.W.R. 1915.

——*Alienation—Widow—Gift with consent of reversioner—Consideration - Effect,*

Where a widow makes a gift of her husband's estate with the consent of her reversioners, and agrees to pay them a sum of money for their consent, the transaction is bad, but is one to divide the estate between them and as such is invalid. (*Ayling and Odgers*, JJ.) KOKUMANU KOTAYYA *v.* PEDDI VEERAYYA.
(1923) M.W.N. 679=1924 Mad. 177.

——*Alienation — Widow — Gift—Entire property to daughter and daughter's son.*

A Hindu widow cannot divide the entire property of her husband among her daughters and daughter's children so as to bind the reversioner. The fact that the portions of the estates are given away at different times cannot validate such a disposition. 22 Mad. 113; 71 M.L J. 528; 21 M.L.J. 695, Dist. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) VIRASAMI NAIDU *v.* BOMMADEVARA PICHAYYA,
33 M.L.J. 536=43 I.C. 167=6 L.W. 768.

——*Alienation — Widow — Gift — When justifiable.*

A widow has no right to make a gift even of a reasonable portion of her husband's property to her husband's niece after the consummation of the lady's marriage. 23 Mad. 113; 35 Mad. 628; 22 M.L.J. 321, Dist. *Quære.*—Whether she has the right to make such a gift even to her own daughter after the consummation of her marriage. (*Sadasiva Aiyer and Napier*, JJ.) KALAVAGUNTA SINGARACHARLU *v.* SREEMAN GUDIMALLA. **29 I C. 269.**

HINDU LAW—Alienation—Widow Gift.

——*Alienation—Widow--Gift—Surrender.*

Whether the alienation is surrender of interests or a gift is to be determined from the construction of document. (*Miller and Sadasiva Iyer*, JJ.) ARTHANARI GOUNDAN *v.* RAMASWAMI GOUNDAN, **13 M L.T. 445=20 I.C. 304=(1913) M.W N. 448=25 M L J 8 (F.B.).**

[On appeal 26 I.C. 757=28 M L J. 1. 50 I.C. 498=42 Mad. 523 (P.C.)]

——*Alienation — Widow — Gift—Taking care of donor.*

A widow gave certain property to her niece for having taken care of her in the past and on promise of taking care of her till her death. *Held*, the necessity for the gift was not apparent and could not bind the reversioners. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) POLIREDDI CHINNAMMA *v.* MAGANTI VENKATARAMAYA. **16 I C. 60=(1913) M.W.N. 75.**

——*Alienation—Widow—Gift—Religious purpose—Gift in accordance with wishes of deceased husband.*

A gift by a Hindu widow in accordance with the expressed dying wishes of her husband, especially one entailing the many spiritually beneficial acts that were contemplated, would be binding on the reversioners. 6 N.L.R. doubted. (*Hallifax*, A J.C.) RAMCHANDRA BALKRISHNA *v.* RAM CHANDRA.
1922 Nag. 222.

——*Alienation—Widow—Gift—If challenged by reversioners—Strangers if can—Impeach—Nature of the transaction.*

A sale, mortgage or gift by a Hindu widow which purports to pass the absolute title is valid against every one except the reversioners and unless the reversioners elect to treat it as a nullity, it subsists as against every one else. A Hindu widow is not a tenant for life, but owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate if subject to certain conditions being complied with; her alienation is not therefore absolutely void but is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure, treat it as a nullity without the intervention of any Court, and he might show his election to do the latter by commencing an action to recover possession of the property. Consequently a gift of the whole of her husband's property made by a Hindu widow not challenged by the reversioner during her lifetime and acquiesced in by those who would take a vested interest after her death cannot be challenged by any one else. It is the reversioners and the reversioners alone who can dispute the gift. If they choose to allow the property to which they are entitled to remain in the possession of the donee that

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is their affair and no one else can object. If the donee remains in possession under a claim of right for 12 years, he will acquire an indefeasible title even against the reversioner. (*Miller*, C.J. *and Mullick*, J.) MAHARAJAH KESHO PRASAD SINGH *v.* CHANDRIKA PRASAD SINGH. **2 P. 217=3 P.L.T 797=1923 P. 122.**

———*—Alienation — Widow —Gift—Dedication of property to idol.*

A woman having the estate of a Hindu mother cannot create a valid title in favour of an idol. (*Atkinson and Das*, JJ.) SRITHAKUR PRMOD BANABIHARI *v.* ATKINS.
53 I.C. 106=4 Pat. L.J 533.

Alienation—Widow—Maintenance.

———*—Alienation — Widow — Maintenance —Future maintenance.*

A Hindu widow is justified in alienating her husband's estate where its income is insufficient for her maintenance. She is not obliged first to run into debt and then to sell the land in order to discharge the debt with interest added. If by first selling the land she can so improve the estate as to provide sufficient for her own maintenance, this is not merely a prudent but a necessary arrangement. (*Chevis and Campbell*, JJ.) RADHA RAM *v.* KUSHI RAM.
1922 Lah. 201.

———*—Alienation —Widow—Maintenance.*

If the rents realised are insufficient to provide for the maintenance and to pay a maintenance debt, the widow is entitled to alienate immoveable property for the above purpose. Within the limits imposed on her, the widow has absolute power of enjoyment of her immoveable property. A sale beyond legal necessity would be binding only during her life-time. (*Hayward*, A.J.C.) RATANSI *v.* UMABAI.
9 I.C. 997.

Alienation—Widow—Mortgage.

———*—Alienation — Widow — Mortgage — Burden of proof necessary to borrow—Upon the particular terms—Proof whether necessary.*

A person who deals with a Hindu Widow having a limited estate is bound to establish the facts, which justified the transaction under which he claims. In the case of a mortgage, made by a widow, it is incumbent on the mortgagee to show not only that there was necessity to borrow, but also that it was not unreasonable to borrow at a high rate and upon the particular terms, and, if this is not shown, the rate and terms would not stand even though the charge may be upheld. (*Kanhaiyalal*, J.C.) DARYAO SINGH *v.* KALI SINGH.
9 O.L J. 213=4 U.P.L.R. (O C.) 63=1922 Oudh 173.

———*—Alienation — Widow — Mortgage — Interest—High rate—Necessity—Proof of—Onus on creditor—Liability of reversioner.*

A person who takes mortgage from a Hindu widow if he charges a high rate of interest in

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consideration of the risk he incurs, that covenant cannot be enforced against the person to whom the property ultimately goes after the death of the widow, even with regard to that portion of the consideration which may be found to be supported by legal necessity, unless the circumstances attending the loan, indicate that the rate of interest charged was reasonable. Ordinarily 1 per cent. per mensem is reasonable in such cases. (*Kanhaiya Lal*, J.C.) BAIJ NATH *v.* SHEORAJ SINGH.
22 O C. 260=53 I C. 761=6 O L.J. 469.

———*—Alienation —Widow—Mortgage debt—Mode of realisation —Reversioner's right.*

A Hindu widow in possession of her husband's estate can realise the mortgage debts due to the estate by alienating her mortgagee's right for consideration. When a Hindu widow in possession of husband's estate tries to realise debts due to the estate, the reversioners can exercise some sort of control over the proceedings and the Courts will by means of necessary orders enforce their rights to prevent the widow from committing waste or from making arrangements amounting to alienation of the corpus of the estate. (*Piggott*, J.C. *and Sabonadiere*, A. J. C.) NAND KISHORE *v.* MANGAL DIN.
21 I.C. 8.

———*—Alienation—Widow—Mortgage by—Interest—High rate—Necessity for—Burden of proof.*

Where in a suit against the reversioners on a mortgage by a Hindu widow the principal is found to be for necessity, the question as to the necessity of the rate of the interest should not be gone into unless specially raised by the defendants. (*Das and Adami*, JJ.) JAG SAHU *v.* RADHA KISHAN. **2 U.P.L R (Pat) 127=1 Pat. L.T. 209=6 Pat L J. 287=56 I.C. 867=1920 Pat. 211.**

———*—Alienation—Widow—Mortgage by—What passes.*

A mortgage by a widow of her right and interest in her husband's estate is not necessarily a mortgage only of her life interest. (*Sharfuddin and Roe*, JJ.) NARAIN BATI KUNWARI *v.* RAMDHARI SINGH.
20 C W.N. 731=1 Pat. L.J. 81=34 I.C. 277=3 Pat. L W 377.

Alienation—Widow—Necessity.

———*—Alienation—Widow—Necessity.*

The expression "necessity" when used in connection with an alienation by a Hindu widow, has a somewhat special, almost technical, meaning. A widow can alienate if there are no other means available for the obligatory ceremonies to secure the repose of the soul of her husband. She can alienate immoveable property to pay the last owner's debts or (if there is no other avaliable source of supply) for her own or for infant children's maintenance. Necessity does not mean actual

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compulsion but the kind of preseure which the law recognises as serious and sufficient. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MT. SHYAM KUMARI **31 M.L.T. 200 = 9 I.A. 342 = 3 Pat. L.T. 749 = 16 L.W. 956 = 21 A.L.J. 18 = 9 O. & A.L R. 175 = 27 C W.N. 269 = 37 C.L.J. 316 = 44 M.L.J. 751 = 1922 P.C. 356 (P C.).**

———*Alienation — Widow – Necessity—Suit by reversioner.*

A Hindu who was separate, died leaving behind, two widows, defendant No. 1 and another. He possessed considerable property but was heavily in debts and the property in question was subject to a mortgage. The two widows separated and a moiety of the property was enjoyed by each, subject to a proportionate share of mortgage debt. Defendant (1) sold her share for Rs. 5,300 to satisfy a mortgage decree for Rs. 4,588-2-2 and the balance Rs. 711-13-10 was appropriated to reimburse herself for expenses of her husband's brother's daughter's marriage. The plaintiff, the nearest surviving agnate brought a suit after a long delay for a declaration that the sale was void against him as a reversioner. *Held*, the husband of defendant (1) died leaving his debts unpaid and it was to satisfy the debts secured by mortgages that the defendant (1) sold her moiety of the property ; there was therefore necessity in law and in fact for the sale of the moiety of property. The sale would not be invalid no matter what may have been the purpose to which the defendant (1) applied the balance of Rs. 711-13-10. The purchasers, were not bound to see that the defendant (1) applied to any particular purpose. Further held that the delay on the flimsy ground that the plaintiff was not aware of the sale was inexcusable (*Sir John Edge*). MEDAI DALAVOI, THIRUMALAIYAPPA MUDALIAR *v.* NAINAR TEVAN.

16 L.W. 478 = 31 M.L.T (P.C.) 149 = (1922) M.W N. 804 = 4 U.P L.R. (P.C.) 92 = 27 C.W.N. 365 = 21 A.L.J 282 = 1922 P.C. 307 (P.C.).

———*Alienation—Widow—Necessity —Religious or charitable purposes—What are—Gift of a small portion of the estate to Deity for the spiritual welfare of her deceased husband—Validity of.*

The Hindu Law recognises two sets of religious acts as justifying an alienation by a Hindu widow. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed by the Hindu Religious Law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. With reference to the first class of acts the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased.

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In one case if the income of the property or the property itself is not sufficient to cover the expenses she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view. Where a Hindu widow after performing a pilgrimage to Jagannath gifted a small portion of her husband's estate (in this case a one seventy-fifth) for the observance of bhog (food offerings) to the deity and for the maintenance of the priest and she purported to make the gift for the welfare of her deceased husband's soul and his salvation. *Held*, that the gift was valid though the widow had ample income from her husband's estate out of which she might have made the gift. 8 M I A. 329 ; 13 M.I.A. 209 ; 8 Mad. 552; 34 Mad. 288 approved. 22 Cal. 506 Dist. (*Mr. Ameer Ali*). SARDAR SINGH *v.* KUNJ BEHARI LAL.

44 All. 503 = 16 L.W. 871 = 31 M L T. (P C.) 262 = 49 I.A. 383 = 37 C.L.J. 383 = 44 M.L J. 766 = (1922) P.C. 261 (P.C.)

———*Alienation—Widow—Necessity— Permanent lease—Fair rent—Onus.*

A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims. The mere fact that the rent reserved was a fair market rent, or the price obtained was a fair market price cannot alone, and in themselves, be regarded as sufficient. (*Lord Buckmaster.*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL.

20 A L.J. 22 = 26 C.W N. 322 = 35 C L.J. 116 = 42 M.L J. 253 = (1922) M.W.N 93 = 24 Bom. L R. 346 = 15 L.W. 417 = L R. 3 (P.C.) 77 = 30 M.L.T. 234 = 3 Pat. L.T. 311 = 1922 P.C. 39 (P.C.)

———*Alienation—Widow—Necessity—Proof of—Lapse of time—Presumption—Onus.*

Where a sale of family property by a Hindu widow is impeached for want of justifying necessity and a very long time (82 years in this case) has elapsed since the sale took place, though the onus is on the alienee to prove necessity it is not reasonable to expect such full and detailed evidence of the circumstances which gave rise to the sale as in the case of an alienation at a more recent date and presumptions are permissible to fill in the details which have been obliterated by time. (*Lord Shaw*) CHINTAMANIBHATLA VENKATA *v.* RANI OF WADHWAN.

43 Mad 541 = 47 I.A. 6 = 38 M.L.J. 393 = 11 L W. 451 = (1920) M.W.N. 315 = 18 A.L J. 367 = 22 Bom. L.R. 541 = 55 I.C. 538 = 2 U.P.L.R. P.C. 77 (P.C.)

———*Alienation — Widow — Necessity — Litigation—Lapse of time.*

It is for the transferee from a Hindu widow to establish either that there was legal neces-

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sity in fact for the borrowings, or that from sufficient enquiries made, he honestly believed that there was such necessity. Lapse of time does not affect the question except in so far as it might give rise to a presumption of acquiescence or save the alienee from adverse inferences arising from the scanty proof offered. It is not sufficient to establish that there were litigations and expenses must have been incurred. It must be shown that the expenses could not have been met from the income of the estate, that they were reasonable, and what they were. If there be no legal necessity, the fact that the full price was paid, does not by itself justify a sale by a Hindu widow. (*Viscount Haldane*), RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD. **43 Cal. 417=36 I C. 499 (P C.)**
[On Appeal from 38 Cal. 721= 12 I.C. 931.]

——*Alienation—Widow—Necessity—Proof of—Recitals—Value of—Old alienation—Maintenance of widow.*

The onus of proving that an alienation by a Hindu widow is binding on the reversioner is on the alienee. 23 I.A. 57 Ref. Recitals of necessity in the deed of alienation cannot by themselves be proof of its existence. If the alienations were challenged immediately, so that independent evidence would be available, the recitals would deserve but slight consideration. If by effluxion of time, evidence independent of the recital disappears and becomes unavailable a recital of necessity consistent with probability and circumstances, assumes greater importance and cannot lightly be set aside. The recital is clear evidence of representation to the purchaser and, when evidence of actual enquiry by him has become impossible, the recital, coupled with circumstances which justify a reasonable belief that an enquiry would have confirmed its truth is sufficient evidence to support the alienation. Otherwise a title would become weaker as it grows older. In the absence of sufficient current income the maintenance of a widow (after paying off the debts and other expenses is a necessity justifying an alienation by her. The maintenance need not be measured merely by a sufficient sum to support bare existence. The periods at which the properties were sold, the small sums for which they were sold and the disposition of the property, piece by piece, with fair regularity for a period of 16 years, all supported the view that the widow was unable to maintain herself out of the income and the sale was therefore justifiable. (*Lord Chancellor.*) NANDLAL *v.* JAGAT KISHORE ACHARYA.
44 Cal. 185=20 M L T. 335=31 M L J. 563= (1916) 2 M.W N 336=4 L W. 458= 18 Bom. L R. 868=16 A L J. 1103= 24 C L J. 487=1 P L.W. 1=21 C W.N. 225= 10 Bur. L.T. 177=36 I C 420= 43 I.A. 249 (P.C.).

——*Alienation—Widow—Necessity—Onus of proof—Recitals in deed, whether sufficient evidence.*

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It is the purchaser who must support a sale by a Hindu widow and there must be evidence to prove legal necessity as would bind the husband's estate. Recitals in mortgages or deeds of sale as to the existence of necessity for alienation are not evidence by themselves of the fact and in order to substantiate the allegation there must be some other evidence which is external. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDIA KUNWAR. **36 All 187= 26 M L J 443=18 C.W.N. 649= 12 A L J 495=19 C L J. 439= (1914) M W.N 405=16 M L.T 393= 16 Bom. L R. 352=23 I C. 715= 1 L.W. 74 (P.C.)**

——*Alienation—Widow—Necessity—Payment of husband's debts during his lifetime—Voluntary payment—Onus.*

The payment by a Hindu wife of her husband's debt during his lifetime must be considered (in the absence of evidence to the contrary) as voluntary payment, and will not support an alienation by the widow after her husband's death, of the estate with a view to discharge her debts. The obligation lay on the appellant to prove that there was such liability and she has not satisfied it. (*Lord Macnaghten.*) BHAWANI KUNWR *v.* HIMMAT BAHADUR. **33 All. 342=15 C W N 466= 13 C.L J. 441=9 M.L.T, 465= 8 A.L J 474=13 Bom. L R. 384= 21 M.L.J. 611=10 I C. 274= (1911) 2 M.W.N 445 (P.C.).**
[On Appeal from 30 All. 352]

——*Alienation—Widow—Necessity—Liability to pay—Revenue—Rebuttal.*

Where an estate in the hands of a widow has to pay arrears of government revenue that constitutes proof of necessity for an alienation, even if government has not taken any steps to realise it by sale. But this can be related by showing that at that time she had other funds in her hands for paying the same. (*Ryves and Daniels, JJ.*) LALTA PRASAD *v.* DARSHAN SINGH. **1924 All. 149.**

——*Alienation — Widow — Necessity — Payment of mother's debts.*

Recitals in a deed of sale by a Hindu limited owner are not in themselves evidence of necessity. 44 C 186 followed. It is not competent to a daughter to alienate the estate for her mother's debts so as to bind the ultimate reversioners. The reversioners are in no way bound by a decision against the daughters. (*Stuart, J.*) SITA RAM *v.* REWA RAM. **1923 All. 366.**

——*Alienation — Widow — Necessity — Recitals in deed—Value of.*

Though recitals in a sale deed by a Hindu widow could not by themselves be taken as conclusive evidence of legal necessity, the recitals coupled with other evidence, circumstantial or otherwise, may amount to sufficient proof in the circumstances that the

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transactions were binding on the family. 44 C. 186 (P.C.) Rel. (*Lindsay and Stuart*, JJ.) SARJU PRASAD *v.* MAHOMED SHAKUR.
1922 All. 126.

———*Alienation — Widow — Necessity— Alienation to pay husband's time barred debts.*

A Hindu mother, inheriting her son's estate, as such, cannot make an alienation to pay her husband's time-barred debts not charged on the property. (*Gokul Prasad and Stuart*, JJ.) SHEORAM *v.* SHEO RATAN. **19 A.L.J. 613 = 63 I.C. 279 = 43 A. 605.**

———*Alienation — Widow — Necessity — Mitakshara Law.*

To support an alienation by widow, as being one for religious or charitable purpose it must be proved that the acts intended to be performed, were supposed or intended to conduce spiritual welfare on the husband. Dedication of *Dharmasala* is a religious act, and may confer spiritual benefit on the dedicator but it does not follow that it confers the benefit on a third party. The question is always one of fact. An act supposed to confer spiritual benefit on the widow does not necessarily confer such a benefit on the husband. (*Rafique and Stuart*, JJ.) SHYAMDIR *v.* BIRBHADRA.
43 All. 463 = 62 I C. 432 = 19 A.L.J. 312.

———*Alienation—Widow—Necessity—Business of husband,*

It is a general rule of Hindu Law that a widow in possession of her husband's estate, cannot alienate moveable or immoveable property inherited from him except for legal necessity. But in the course of management of her husband's business, she can transfer only if the prudent conduct of business requires it, the prudent conduct of business amounting to necessity. The profit or loss on a transfer made by a widow is not a test of necessity. (*Stuart and Ryves*, JJ.) PAHALWAN SINGH *v.* JIWAN DAS. **42 All. 109 = 59 I.C. 162 = 18 A.L.J. 41.**

———*Alienation—Widow--Necessity—Money paid for one purpose applied to another—Effect of.*

The fact that money advanced to a Hindu female for one legal necessity is used or diverted to some other purpose equally valid is insufficient in itself to make the transaction invalid. (*Walsh and Ryves*, JJ.) JAGDISWAR PRASAD *v.* SHEO BAKSH RAI.
51 I.C. 855 = 1 U.P.L.R. (H.C.) 119.

———*Alienation — Widow — Necessity— Excessive sale—Indivisible estate.*

The sale of the whole of an indivisible large property, *e.g.*, a house, by a female having a limited estate to pay off a debt of the last male holder is valid though the price realised is much in excess of the debt. (*Tudball and Rafique*, JJ.) BALKRISHNA DAS *v.* HIRA LAL.
41 All. 338 = 50 I.C. 74 = 17 A.L.J 239.

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation — Widow — Necessity— Benefit—Feeding.*

A Hindu widow succeeded as heir to her son and made an oral gift of a portion of the property in her possession in favour of the *pandas* of the temple of Jagannath. On her return she made a formal deed of gift in which after alluding to the oral gift she stated that she had made the gift and *shanklap* for the salvation of her husband and his family members and for her own salvation. The portion endowed constituted no more than 180 parts of the estate. *Held*, that the gift was valid having been made with a view to the spiritual benefit of the widow's husband and her sons who were included in the expression "husband's family members." An alienation made by a Hindu widow for the spiritual benefit of the deceased will not be set aside merely because it was not made in connection with a *shradh* ceremony of the deceased. In the case of an alienation for a purpose regarded as indispensable to welfare of the late husband, *e.g.*, *Shradh*, funerals, etc, the question will not be what proportion does the property alienated bear to the entire estate but only whether the alienation was a reasonable one and suitable to the position of the family. There may be alienations made by a Hindu widow for the purpose of doing pious acts for the benefit of her late husband which are not in the nature of spiritual necessities; and with regard to such alienations the question of the proportion borne by the property alienated to the value of the entire estate becomes pertinent. (*Piggott and Walsh*, JJ.) KUNJ BEHARI LAL *v.* LALTU SINGH. **41 All. 180 = 48 I.C. 847 = 16 A.L.J. 996.**

———*Alienation — Widow — Necessity— Interest—High rate.*

To support an alienation from a Hindu widow, legal necessity must be shown not only for the loan but also for raising it at a very high rate of interest. It is not sufficient to show the existence of previous debts but these debts too must be proved to have been incurred for legal necessity. (*Richards*, C.J. *and Banerjee*, J.) CHITAR MAL *v.* RAM NARAIN.
24 I.C. 84 = 12 A.L.J. 603.

———*Alienation — Widow — Necessity— Marriage of daughter — Pilgrimage — Feast, expenses of construction of well.*

Money borrowed by a widow for the expenses of the marriage of her daughter is for legal necessity. Expenses for the construction of a well may be a legal necessity if proved to be for the benefit of the estate. A feast given by a Hindu widow on return from a pilgrimage is not so intimately connected with the pilgrimage as to justify its allowance as money spent for legal necessity. (*Stanley*, C.J. *and Banerji*, J.) MAKHAN LAL *v.* GAYAN SINGH.
33 All. 253 = 9 I.C. 199 = 8 A.L.J. 13.

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation—Widow—Necessity—When liable to be set aside.*

Where a part of the consideration for an alienation by a Hindu widow is for necessity, and there is not much difference between the actual sale price and the true value of the lands, the alienation is valid. (*Shah*, A.C.J. *and Coyajee*, J.) CHANBASAPPA *v.* CHANBASAPPA.
25 Bom. L R. 1078=1924 Bom. 176.

———*Alienation—Widow—Necessity— Onus of proof—Recitals to be specific.*

A Hindu widow cannot sell more than her interest in her husband's property unless there is legal necessity and the onus is on the purchaser to prove it. If payment of debts is relied on there ought to be a recital in the deed of the specific debts paid off. (*Macleod*, C.J. *and Shah*, J.) MOHAN SINGH UMED RAMOL *v.* DALPATSINGH KAMBAJI. **46 Bom. 753=24 Bom. L.R. 289=1922 Bom. 51.**

———*Alienation — Widow — Necessity—Assisting reversioner — Son subsequently adopted.*

An alienation of her husband's property by a widow to assist a reversioner in his pecuniary difficulties is not binding on a son subsequently adopted by her to her husband. (*Scott*, C.J. *and Roe*, J.) RAMAKRISHNA KUPPUSWAMI *v.* TRIPURBAI. **12 I C. 529=13 Bom. L.R. 940.**

———*Alienation—Widow—Legal necessity—Marriage of daughter—Pilgrimage.*

A debt by a widow for her daughter's marriage expenses is legal necessity. A Hindu widow has a larger power of disposition for charitable purposes conducing to the spiritual welfare of her husband. Expenses for pilgrimage leading to the spiritual benefit of her husband come under legal necessity. (*Chandavarkar and Hayward*, JJ.) GANPAT DHAKOO *v.* TULSI RAM.
36 Bom. 88=12 I.C. 271=13 Bom. L.R. 860.

———*Alienation — Widow — Necessity — Inquiry as to—Recitals in document—Effect.*

A recital in a mortgage effected by a Hindu widow as to necessity is clear evidence of representation and if there is some proof of inquiry, all these taken together are sufficient to support the deed. (*Ghose and Panton*, JJ.) BANKU BEHARY DE *v.* BISSESWAR LAL MARWARI. **1923 Cal. 575.**

——*Alienation—Widow—Necessity—Proof of—Recitals in deed—Enquiry — Burden of proof—Lapse of time.*

When a person claims title under an alienation effected by a Hindu widow in respect of the estate of her husband, the burden lies on him to establish either that there was legal necessity in fact which justified the alienation or that he made proper and *bona fide* enquiries and did all that was reasonable to satisfy himself as to the existence of such necessity. 35 C. 420; 16 A. 420; 35 C.L.J. 116, Ref. In the application of this primary rule, it is to be borne in mind that recitals in conveyances or mortgages of the existence of legal necessity are not by themselves evidence of the fact and there must ordinarily be some evidence to substantiate the allegations *aliunde*. 36 A. 187; 37 A 369, Ref. Though lapse of time does not affect the question of onus of proof regarding legal necessity, it may give rise to a presumption of acquiescence or save the alienee from adverse inference arising from the scantiness of the evidence offered on his behalf. To put the matter in another way, when by efflux of time, direct evidence independent of the recital becomes unavailable, a recital of necessity consistent with probability and the circumstances assumes greater importance; it is clear evidence of a representation to the purchaser and when evidence of actual enquiry by him has become impossible, the recital coupled with circumstances which justify a reasonable belief that an enquiry would have confirmed its truth, is sufficient evidence to support the transaction. Where there is pressure on the estate, it is not necessary to determine whether the estate might have been kept free from debts by prudent management. 23 C. 766, 189: This is so especially where the lender acted *bona fide* and enquired into the necessity for the loan. 6 C. 843: 20 C.L.J. 23; 30 C.L.J. 56; 19 C.W.N. 80, Ref. Where the transaction was in the main for legal necessity it would not be impeachable on the ground that a smaller sum would have been sufficient to remove pressure at the time. 27 C.W.N. 365 (P.C.), Ref. (*Mookerjee and Rankin*, JJ.) CHANDRA KISORE DATTA MAJUMDAR *v.* KUMAR UPENDRA CHANDRA CHOUDHURY. **37 C.L.J. 319=1923 Cal. 563.**

———*Alienation—Widow—Necessity—Proof of—Recitals—Value of.*

Where a Hindu widow executed a sale more than 40 years ago and the sale was recited to be for legal necessity and the transaction was not impeached by the then reversioners during the widow's life time, *held*, that the presumption was in favour of the existence of a legal necessity as recited in the deed in question and that it was not competent to any person other than the nearest reversioner to avoid the sale. (*Walmsley and Ghose*, JJ.) JABEDALI SHEIKH *v.* PRASANNA KUMAR NAG.
27 C.W.N. 433=1923 Cal. 423.

——*Alienation — Widow — Necessity — Posthumous son—Position of.*

An unborn child, is treated as born, only when it is for its benefit, but is not considered as born for the benefit of third persons. The title of a posthumous son must operate retrospectively to the time of death of his father and his rights, in case of alienation of the estate by his mother before his birth, are the same as his rights in the event of a partition before his death. He is not bound by an alienation by his mother, of his paternal estate before his birth. (*Mookerjee and Panton*, JJ.) KUSUM KUMARI *v.* DASARATHI. **34 C.L.J. 321.**

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——*Alienation — Widow — Necessity — Lease by widow mother—Burden of proof.*

The adult sons of a widow are not bound by a lease given by her of their property where there is nothing to show that they received any benefit therefrom. The minor sons can be bound by it if there was legal necessity or benefit to the minor, the burden to prove which is on the person taking the lease. (*Chatterjee and Newbould*, JJ.) HEM CHANDRA ROY *v.* SHASHI BHUSHAN. **68 I C. 813.**

——*Alienation—Widow—Necessity—Proof of—Recitals of—Reversioner joining in alienation—Estoppel.*

The mere fact that a conveyance of a portion of her husband's estate is executed jointly by a Hindu widow and the then next reversioner does not by itself create an indefeasible title in favour of the vendor. He must prove legal necessity or such *bona fide* inquiry as entitles him to protection from a Court of Equity. A mere recital in the deed as to the existence of such necessity by itself, is insufficient. The concurrence of the then next reversioner is a presumption in favour of the validity of the transaction. Where the creditor is not shown to have made a *bona fide* inquiry, he must prove that there was an actual pressure on the estate or danger to be averted such as a threatened suit on a genuine debt, an outstanding decree or an impending sale which the widow had no funds to meet. Where persons contesting an alienation by a Hindu widow claim not through their father but directly as reversioners to the estate of the last male owner they are not precluded by any rule of estoppel from disputing the validity of the alienation nor are they affected by the circumstance that they had, after the death of their father and before the death of the widow taken by inheritance land transferred by the widow by way of gift to their father. (*Mookerjee and Panton*, JJ.) RAMES CHANDRA CHAKRAVARTI *v.* SASI BHUSAN UPADHYA. **23 C.W.N. 1025 = 53 I.C. 664 = 30 C.L.J. 56.**

——*Alienation—Widow—Necessity—Proof of—Recitals of legal necessity—Alienation if may bind reversioners—Estoppel — Ratification.*

The recitals of legal necessity in an alienation by a Hindu widow made more than 40 years before suit could not be given the weight attached to similar recitals in 44 Cal. 186, in as much as evidence was available as to the pecuniary condition of the estate at the time of the alienation and it was made to a person who in fact managed the estate for the widow. The alienation, in this case, a permanent Ijara, was not made for legal necessity nor was it binding on the reversioners apart from legal necessity as being for the "benefit of the estate." 40 Mad. 402, Ref. The reversioners did not by getting themselves substituted as the legal representatives of the widow in

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a suit for arrears of Ijara rent which had fallen due in her lifetime, ratify the Ijara. (*N. R. Chatterjee and Smither*, JJ.) UPENDRA KISHORE MANDAL *v.* NOBO KISHORE MANDAL **48 I.C. 993 = 28 C.W.N, 64.**

——*Alienation — Widow — Necessity — Proof of.*

The propriety of an alienation by one of several limited owners of a portion of the property in her separate possession should be determined with reference to the separate portion in her possession. (*Richardson and Walmsley*, JJ.) SHYAMDAS ROY CHOWDHURY *v.* RADHIKA PRASAD. **22 C W N. 816 = 47 I.C. 855 = 29 C.L J. 24.**

——*Alienation—Widow—Necessity—Debts of husband—Permanent lease.*

A Hindu widow has got powers to grant a permanent lease to discharge a usufructuary mortgage of her husband. 36 I.C. 420, P.C., Rel on. (*Fletcher and Shamsue Huda*, JJ.) BAIKUNTHA NATH BANKER *v.* SATISH CHANDRA BHUSAN. **46 I.C. 876.**

——*Alienation — Widow — Necessity — Maintenance.*

A Hindu widow is not bound to incur debts for her maintenance. She may sell a portion of the property instead of mortgaging the whole for such purpose. (*Chitty and Smither*, JJ.) KULAK CHANDAR DAS *v.* KULA CHANDRA DAS. **46 I.C. 269.**

——*Alienation—Widow—Necessity — Test —Wordly purposes and promotion of spiritual welfare, distinction between.*

The test to be applied, where an alienation made by a limited owner is impeached, is whether the transaction is fair and proper, lawful and valid, and justified by Hindu Law; necessity is only one of the phases of the test of propriety. The widow has a larger power of disposition for religious or charitable purposes or for purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. A Hindu widow, daughter or mother, is entitled to alienate a small portion of the estate in her hands for religious purposes. Case law discussed. The disposition for the performance of a work of recognised religious merit, is lawful, valid and proper, especially where the area alienated does not constitute an unreasonably large fraction of the entire estate. (*Mookerjee and Newbould*, JJ.) KHUBLAL SINGH *v.* AJODHYA MISSER. **43 Cal. 574 = 31 I.C. 433 = 22 C L J. 345 =**

——*Alienation—Widow—Necessity— Government revenue.*

Government revenue and other Government demands, are a necessity justifying alienation if they cannot be met out of the income. (*Sharfuddin and Coxe*, JJ.) GAJADHAR PARSHAD SAHU *v.* BINDUBASHINI PERSHAD, **29 I.C. 181.**

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———*Alienation—Widow—Necessity — Inquiry.*

An alienee from a Hindu widow must prove either legal necessity therefor or a *bona fide* inquiry as to the legal necessity. (*Mookerjee and Beachcroft*, JJ.) RAMESHWAR MANDAL *v.* PROVABATI DEBI. **20 C L J. 23 = 25 I.C. 84 = 19 C.W.N. 313.**

———*Alienation — Widow—Necessity—Pilgrimage to Ganga—Feast to Brahmans—Legal necessity.*

A Hindu widow is justified in alienating her husband's property in making a pilgrimage to Ganga to perform *Sradh* ceremony and feasting Brahmans after the ceremony. (*Mookerjee and Beachcroft*, JJ.) DENO NATH GOSH *v.* HRISHIKESH PAL. **18 C.W.N. 1303 = 24 I.C. 670 = 20 C L J. 285.**

———*Alienation — Widow — Necessity—Barred debts.*

Sale *bona fide* made in satisfaction of a debt which, had it not been barred, would have made the sale one for purposes, is not by the mere fact that the debt is barred, voidable at the option of the reversioners. Alienation for house hold expenses during and in anticipation of famine is for necessity. (*Coxe and Chatterjee*, JJ.) KHOJENDRA NARAYAN SINGH *v.* SANTO LAL. **22 I.C. 669.**

———*Alienation—Widow—Legal necessity—Inquiry—Nature of.*

Inquiry from widow without reference to the creditors mentioned in the deed is not sufficient to protect the alienee. (*Holmwood and Chatterjee*, JJ.) JANBHAI *v.* BALBHADRA SUAR. **10 I.C 350 = 15 C.W.N. 793.**

———*Alienation—Widow—Necessity— Just debt—Sale of equity of redemption.*

The plaintiffs sued for a declaration that a sale of ancestral property by the widow of one J would not affect their reversionary rights, J originally mortgaged, the land for Rs. 1,500 in 1903. The mortgage was converted into a sale by the widow in 1910, the consideration being Rs. 1,500 due on the mortgage, Rs. 1,221-13 due as interest and Rs. 24 spent on repairing a well and due from the mortgagor under the terms of the deed of mortgage. *Held*: that the widow had no necessity to sell the equity of redemption, the debt being a charge only on the mortgaged land and not being recoverable from the person or other property of the mortgagor, and that the interest due under the mortgage was not a just debt, as held in 65 P.R. 1900, F.B. (*Scott-Smith*, J.) BODH RAJ *v.* RAJA SINGH. **1923 Lah. 668.**

———*Alienation — Widow — Necessity—Partial necessity.*

If in the case of a sale by a widow a small portion of the purchase money was not required for urgent necessity, it does not follow that the sale itself was not due to necessity, unless it could be reasonably presumed or unless it is proved that the sale of a lesser area for the exact amount required for necessity was feasible (case law discussed). The principle is applicable with all the more force to the case of an alienation by a male proprietor. (*Martineau and Brasher*, JJ.) GOKHA RAM *v.* SHAM LAL. **3 Lah. 426 = 1923 Lah. 268.**

———*Alienation—Widow—Necessity partially proved—Conversion of sale into mortgage.*

The sale of immoveable property by a limited owner ought not to be converted into a mortgage merely because a trifling portion of the consideration was paid in cash for current expenses and was not proved to have been for necessity. 130 P.R. 1906 and 8 P.R. 1908 foll. (*Scott-Smith and Brasher*, JJ). HASSAN MUHAMMAD *v.* MAHANDA. **5 Lah. L.J. 292 = 1923 Lah. 245.**

———*Alienation—Widow—Necessity— Bulk of the consideration for necessity—Form of decree.*

A Hindu widow is not always bound to sell exactly for the amount for which there is legal necessity. In each case the court has to see whether having regard to the circumstances the alienation was a proper one. 1 B. L. R. 201, 14 C. W. N. 895, Ref. The rule that a widow should not alienate in anticipation of a necessity is not an inflexible rule. What is to be seen is whether in the particular case, the widow has dealt fairly towards the expectant heir. Even granting that a minor portion of the consideration is not proved to have been taken for legal necessity, the alienation ought to be upheld. 26 I. C. 178; 26 I. C. 418, Ref. (*Abdul Raoof and Martineau*, JJ.) NAMAN MAL *v.* HAR BHAGWAN. **2 Lah. 357 = 1922 Lah. 317.**

———*Alienation — Widow — Necessity — Future necessity.*

A Hindu widow is not competent to alienate her husband's estate in order to raise money for a future necessity. A daughter's marriage which is not likely to take place for several years to come is not a necessity. 46 P.R. 1912 Foll. Where there is a mortgage on the estate but there is no pressure from the creditor the widow is not justified in selling immoveable property for paying off the mortgage and keeping the balance on her hands in anticipation of future necessity. 31 Mad. 153 Dist. (*Abdul Raoof and Martineau*, JJ.) BALLA SINGH *v.* GURDIT SINGH. **3 Lah. L.J. 484.**

———*Alienation — Widow — Necessity—Proof—Debt paid to third person.*

Under the Hindu Law, a widow cannot alienate immoveable property inherited by her from her husband except for special purposes or for religious and charitable purposes or for those which are supposed to conduce to the spiritual welfare of her husband. The payment of a debt contracted by the widow from a third

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person does not of itself justify an alienation by her of immoveable property. (*Shadi Lal and Martineau*, JJ) GOWARDAN DAS *v* VIRU MAL. 1 Lah 48=66 P.L R. 1920= 55 I.C. 847=41 P.W R. 1920.

———*Alienation—Widow—Necessity—Religious purpose—Excessive alienation.*

Whether or not an alienation by a Hindu widow is for spiritual benefit of her deceased husband, whether or not the amount of property alienated is excessive, are questions to be decided according to the relative values of the total estate and of the properties alienated. There is no justification for a *sardarni* making an endowment for the establishment and upkeep of a *langar* and *sadabart*. 4 All. 482; 32 Cal. 473; 22 Cal. 506, and 17 C.W.N. 782; 43 Cal. 574, Ref. (*Scott Smith and Broadway*, JJ.) GAHL SINGH *v* SURJAN SINGH. 84 I.C. 955=146 P.R. 1919.

———*Alienation—Widow—Necessity—Conduct of reversioner.*

If the reversioners admit the existence of debts at the time of mutation after sale in the widow's lifetime, they cannot impeach the sale after her death as being without necessity. (*Scott-Smith and Wilberforce*, JJ.) AUTAR SINGH *v.* HARBHAJAN DAS. 50 I C. 80.

———*Alienation—Widow—Necessity—Partial necessity—Suit by reversioner—Form of decree.*

The proper form of decree in a suit to set aside alienation by a Hindu widow in case the alienation is partly justifiable; is to declare that the alienation shall not affect the reversioner's interest except for the amount of consideration which is found to be binding. (*Chevis and Shadi Lal*, JJ.) RADHA RANI *v.* GUJARAMAL. 40 I.C. 496.

———*Alienation—Widow—Necessity—Conversion of mortgage into sale.*

A sale executed in consideration of a mortgage of the property sold must be deemed to be without consideration inasmuch as the conversion of the mortgage into a sale is not supported by any consideration. (*Scott-Smith and Shadi Lal*, JJ.) RAJENDRA SINGH *v* ABDUL GHANI. 40 I.C. 63=23 P.R. 1917.

———*Alienation — Widow — Necessity — Payment of mortgage debt of next reversionary heir.*

A widow is not justified in selling her husband's property to pay off the mortgage debt due by the next reversionary heir of her husband. (*Shah Din*, C.J.) SARADARA *v.* MODAN. 69 P.W.R. 1917=39 I C. 785= 142 P.L.R. 1917.

———*Alienation—Widow—Necessity—Self-acquired property.*

A widow has no right to alienate the property of her husband, even if the property was not

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ancestral except for necessity. 14 I.C. 71; 23 I.C. 127, Ref. 114 P.R. 1907; (*Broadway*, J.) FATTU *v.* PARTAPI. 39 I.C. 642= 15 P.W.R. 1917.

———*Alienation—Widow—Necessity—Major portion binding—Small sum spent on Chaubarkh ceremony of last male owner's second wife—Reversioner—Estoppel.*

The sale by a widow of which a large major portion of the consideration was proved to be for necessity and a portion was spent for *Chaubarkh* ceremony of the last male owner's second wife in which plaintiff took part and himself received a part of price, was held valid and the vendee was exempted from proving the use of a small sum in view of plaintiff's conduct. (*Shadi Lal*, J.) RODU *v.* DAROPATI. 33 I.C. 999=27 P.W.R. 1916.

———*Alienation—Widow—Necessity—Debt—Marriage.*

A sale by the widow of the ancestral house to discharge the debt contracted long ago by her husband is valid. Money borrowed for the marriage of an agriculturist's daughter is for legal necessity. (*Johnstone*, C.J. *and Shah Din*, J.) JIWANA *v.* NATHU. 38 I.C. 586= 17 P.W.R. 1917.

———*Alienation—Widow—Necessity—Marriage of daughter.*

A Hindu widow has no power to alienate her husband's property in order that she may return a sum of money for her child's marriage, which marriage is not likely to happen for many years to come. No alienation can be made for providing for her future maintenance. 32 Bom. 577 Rel. on. (*Johnstone and Rattigan*, JJ.) TAKCHAND *v.* GOPAL DEVI. 46 P R. 1912=127 P.L.R. 1912= 13 I.C. 482=180 P.W.R. 1912.

———*Alienation—Widow—Necessity—Partial—Right of alienee for possession.*

Where there is only partial necessity proved for a mortgage by a widow, the mortgagee is not entitled after the widow's death, to recover possession of the property from the reversioner not even a fraction of it proportionate to the amount found to be for necessity. The reversioner is, in such a case in the position of a party to a contract which has not been completed by the other party. (*Reid*, C.J. *and Shah Din*, J.) KHAIRA *v.* MAULA. 49 P.R. 1911=136 P.W.R. 1911= 11 I.C. 191=212 P.L.R. 1911.

———*Alienation — Widow — Necessity—Woman's estate—Estate given for maintenance to a married daughter.*

Quære.—Whether a married daughter can dispose of property which she inherits on the death of her father for the purpose of her own maintenance. (*Abdur Rahim and Moore*, JJ.) SHANMUGA VELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. (1920) M.W.N. 679.

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———*Alienation — Widow — Necessity——Proof of—Lapse of time.*

In the case of alienations by a limited owner the onus is on the purchaser to show necessity. The Court may consider the evidence favourably owing to lapse of time but it is of no use when there is no evidence of necessity. (*Spencer and Seshagiri Aiyar*, JJ.) KUNJARU VENKATARAMANAYYA *v.* DEJAPPA KONDE.

22 M.L.T. 233=(1917) M.W.N. 679=6 L.W. 530=42 I.C. 540=34 M.L.J. 319.

———*Alienation—Widow—Necessity—What is,*

The income of a widow is an important factor to be determined whether an alienation is for necessity. The private expenses of the widow are not properly necessary; and maintenance ought primarily to be paid out of income and so the onus is on the alienee to show that the alienation of the corpus for these purposes was necessary. The expenses of litigation on account of an unlawful act of the widow are not necessary. (*Spencer and Krishnan*, JJ.) BHUVARAHA IYENGAR *v.* NATESA IYER. **5 L.W. 127=37 I.C. 763=(1917) M.W.N. 40.**

———*Alienation — Widow — Necessity — Improvident transaction—Absence of good faith—Improvements.*

A Hindu widow sold immoveable property of her husband for a low price for debts of her husband on a mortgage of those properties which were being gradually wiped out from the usufruct. The widow's real object was to get some ready cash into her hands and the alienees were not ignorant of the real object. *Held*, the alienation was invalid against the reversioners. The existence of a debt due by the husband's estate on the date of the sale, does not entitle the widow 'to sell away a portion of the property, if the sale would be imprudent. An alienee under such an alienation who is not a *bona fide* alienee is not entitled to improvements. (*Sadasiva Iyer and Phillips*, JJ.) MUDDUSAWMI SIDDAPPA *v.* BHASKAR LAKSHMI NARASAPPA. **29 M.L.J. 357=18 M.L.T. 223=(1915) M.W.N. 631=30 I.C. 853=2 L.W. 758.**

———*Alienation — Widow — Necessity — Burden of proof on alienee—Attachment by creditor—Onus.*

The burden of proving that an alienation by a widow is binding on the reversioner is on the alienee. But if a creditor of the husband attaches property which had been alienated by the widow, the onus is on him to show that the alienation was nominal and without consideration, and conveys only her life estate and that the remainders could be validly attached. (*Sadasiva Iyer and Tyabji*, JJ.) SEGU CHIDAMBARAMMA *v.* SAREDDI HUSAINAMMA. **39 Mad. 565=29 M.L.J. 516=(1915) M.W.N. 517=16 M.L.T. 394=30 I.C. 101=2 L.W. 952.**

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation — Widow — Necessity — Partial.*

In the case of a sale by a widow the mere fact that a portion of the purchase-money was not required for urgent necessity. It does not follow that the sale itself was not for necessity unless it could be reasonably presumed or unless it is proved that the sale of a lesser property for the exact amount was feasible. (*Sadasiva Iyer and Napier*, JJ.) KANNU CHETTY *v.* AMIRTHAMMAL.

26 I.C. 418=1 L.W. 877.

———*Alienation—Widow—Necessity—Proof of—Old transaction—Burden of proof.*

Courts should approach the evidence as to necessity adduced in respect of an old alienation of a Hindu widow with a much more indulgent mind than where the alienation attacked took place only a few years before suit. 18 W.R. 77; 6 M.I.A. 303; 25 Cal. 103; 35 Mad. 108; (1912) M.W.N. 559, Foll. (*Ayling and Sadasiva Iyer*, JJ.) KANTHU *v.* DA A UPADYA. **26 I.C. 376.**

———*Alienation — Widow — Necessity—Interest on debt.*

A widow can alienate her husband's property for the purpose of paying the interest due by the husband if she cannot pay it from her usual income. (1913) M.W.N. 275; 18 M. 113, Foll. (*Tyabji and Spencer*, JJ.) SAKHIREDDY APPALASWAMY *v.* SAKHIREDDY VENKANNA. **24 I.C. 534=(1914) M.W.N. 488.**

———*Alienation — Widow — Necessity — Partial.*

Where an alienation by a Hindu widow is found to be for justifiable necessity only for part of consideration it binds the reversioners to that extent. 18 Mad. 113, Foll. (*White*, C.J. *and Wallis*, J.) GOVINDA NADAN *v.* VASUDAVA NADAN. **16 I.C. 385.**

———*Alienation — Widow — Necessity — Future necessity.*

A Hindu widow has no right to sell her husband's property for a consideration to be received by her unless there is any urgent necessity in the near future. (*Sundara Iyer*, J.) *In re* VELAPPA GOUNDAN. **13 I.C. 610=(1912) M.W.N. 196.**

———*Alienation—Widow—Necessity—Burden of proof—Anticipating wants.*

Onus of proving the binding nature of the alienation is on the purchaser. A widow cannot mortgage her husband's property and raise a loan to be kept in deposit with the tender to be drawn by her as legitimate occasion arises from time to time. (*Krishnaswami Aiyar and Ayling*, JJ.) APPAJEE *v.* RAMACHARLU. **9 M.L.T. 307=10 I.C. 676=(1911) 1 M.W.N. 257**

———*Alienation—Widow—Necessity—Pressure—Demand by creditor.*

Actual demand by a creditor is not necessary to justify a widow in selling her husband's

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property to discharge a debt. Where interest on a debt of Rs. 400 amounted to Rs. 300 held the widow acted prudently in discharging such debts by an alienation. (*Benson and Sundara Aiyar*, JJ.) MUTHU KRISHNAN CHETTY *v.* ANNAPURNATHACHI. **9 I.C 803 = 9 M.L.T. 313.**

———*Alienation—Widow—Necessity— Religious rites.*

A Hindu widow is entitled to the cost of performing *Virthams* usually observed by widows. 23 Cal. 723, Ref. (*Benson and Sundara Aiyar*, JJ.) SUBRAMANIA AIYAR *v.* MUTHAMMAL. **21 M.L.J. 482 = (1911) 1 M.W.N. 200 = 9 I.C. 614 = 9 M.L.T. 316.**

———*Alienation—Widow – Necessity – Sale to discharge incumbrances.*

Sale of a portion of the estate by the widow to save the remaining portion from being lost is valid, when the incumbrances are heavy and the income does not cover the interest of the debt. (*Benson and Abdur Rahim*, JJ.) BAPPU RAJU *v.* KONDU RAJA. **9 I.C. 324 = 9 M.L.T. 220.**

———*Alienation—Widow—Necessity.*

Legal necessity has to be proved by those who receive the benefit of the alienation by a person with qualified power. (*Dhobly*, A.J.C.) JAIRAM *v.* VENKATRAO. **1922 Nag. 101.**

———*Alienation — Widow — Necessity — Alienation in excess of legal necessity.*

Excessive alienation over legal necessity by a widow may bind reversioners. The test is whether the sale is justified by legal necessity. If it is, and if the amount that is legal and necessary to raise practically constitutes the whole of the consideration then reversioners cannot set aside the alienation. (*Prideaux*, A.J.C.) PADMU SINGH *v.* BADRA BAI. **57 I.C. 675.**

———*Alienation — Widow — Necessity — Debts—Interest in excess of amount—Damdupat—Berar.*

A Hindu widow in Berar cannot alienate her husband's property for paying interest in excess of what was legally recoverable under the rule of Damdupat which is in force in Berar. (*Mitra*, J.) RAMCHANDRA *v.* MT. RADHA. **26 I.C. 598 = 10 N.L.R. 91.**

———*Alienation — Widow — Necessity — Proof of—Recitals in deeds.*

Recitals in deeds cannot by themselves be relied upon for the purpose of proving the ascertainment of facts which they contain, for it is obvious, that if such proof were permitted, the rights of reversioners could always be defeated by the insertion of carefully prepared recitals. Where all the original parties to the transaction are dead, all those who could have given evidence on the relevant points have grown old, or passed away, a

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recital consistent with the probability and circumstances of the case has greater importance and cannot be lightly set aside. But where the person in whose favour the sale was effected was alive and was examined and disbelieved by the Courts below, the recitals ought not to carry much weight. (*Kanhaiya Lal*, J.C.) QAMAR JEHAN BEGAM *v.* BANSIDAR. **12 I.C. 1046 = 9 O. & A.L.R. 341.**

———*Alienation—Widow—Necessity —Partial—Effect of—Sale and mortgage.*

Where the entire consideration for the sale effected by a Hindu widow except a portion of it, is shown to be for necessity, the vendee cannot be deprived of the rights of his purchase. In case of mortgage, such question does not arise because reversioners can sue for redemption on payment of amount for which they may be held liable. (*Stuart and Kanhaiya Lal*, A.J.C.) BHARATH SINGH *v.* MUNNU SINGH. **2 U.P.L.R. (J.C.) 93 = 56 I.C. 291 = 7 O.L.J. 151.**

———*Alienation—Widow—Necessity — Reversioner joining in mortgage by widow.*

Legal necessity will be presumed in case of a joint mortgage by a widow and the reversioners which can be regarded as an evidence of the assent of the reversioners until the presumption is not rebutted, the reversioners cannot on succeeding to the reversionary rights impugn the mortgage thus made. (*Kanhaiya Lal*, J.C.) BHAGWANA *v.* RAMESHWAR. **22 O.C. 266 = 53 I.C. 674 = 6 O.L.J. 460.**

———*Alienation—Widow—Necessity—Rate of interest.*

The lender of money to a widow unless acting *mala fide* is not bound to inquire into how the necessity for the loan was brought about and can recover it even though the widow be at fault. A very high rate of interest cannot be recovered by him unless cause is shown but reasonable rate is to be allowed. (*Lindsay*, J.C.) DWARAKA PRASAD *v.* PRITHIPAL SINGH. **47 I.C. 106 = 5 O.L.J. 271.**

———*Alienation—Widow—Necessity—Proof of—Recitals in deed.*

Very strict proof of necessity cannot be required of persons holding under deeds of transfer excluded by a Hindu widow long before they are challenged. The Court can in such a case presume necessity. Where money is advanced for necessity it is not essential that the deed should recite that fact. (*Lindsay*, J.C.) RAJ BAHADUR LAL *v.* BINDESHRI. **46 I.C. 344 = 5 O.L.J. 219.**

———*Alienation—Widow—Necessity— Surplus fund.*

Where under a transfer of property by a Hindu widow for necessity, the consideration is left with the transferee for satisfying it but owing to his failure it is otherwise satisfied the transfer becomes void and the reversioners are entitled to recover property without paying

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anything. When the purchaser has *bona fide* parted with money to meet a legal necessity, it should be refunded to him with interest when the transfer is avoided. Where a widow alienates property for legal necessity and leaves the consideration amount in the hands of the transferee for satisfaction of that necessity, the transferee having the control and application of the consideration money is bound to see the money was properly applied in discharge of the necessity. 18 Cal. 311, (P.C.), Ref. to. (*Kendall and Kanhaiya Lal*, A.J.Cs.) KANCHAN KANWAR *v.* AMAR SINGH.

25 I.C. 806=1 O.L.J. 475.

———*Alienation—Widow—Necessity— Partial—Right of reversioner.*

Where a mortgage by a widow was found to be necessary only in part it is good only to that extent as against the reversioner, but the reversioner cannot redeem within the period during which the widow herself cannot. (*Lindsay*, J. C.) GAYA DIN UPADHYA *v.* TRILOKI NATH SINGH. **22 I.C. 261=16 O.C. 283.**

———*Alienation—Widow—Necessity--Proof.*

Mere allegation by a widow that the money was borrowed by her for expenses of funeral or for payment of revenue is not by itself sufficient to bind the reversioners. Where a widow borrows for expenses of her daughter's marriage, it must be proved that the income of the property held by her was not enough for her to live on and that it was necessary to borrow. (*Evans*, J.C.) BINDI *v.* BALDEO. **12 I.C. 336.**

———*Alienation—Widow—Necessity—Loan for daughter's marriage.*

Mere borrowing by a widow for her daughter's marriage is not a legal necessity unless the strained circumstances of the widow's finances be proved by evidence to create the necessity for the loan. (*Dawson Miller*, C.J. *and Mullick*, J.) AJTI CHAUDHURI *v* JANAK LAL CHAUDHURI. **1923 Pat. 332=1924 P. 336.**

———*Alienation—Widow—Necessity— Burden of proof.*

When property is alienated to meet the expenses of litigation to protect the estate, it must be shown that at the time of alienation, there was no money in the hands of the widow, and the burden of proving it lies on the creditor. (*Das and Ross*, JJ.) NARAIN SINGH *v.* SARJUG SINGH. **60 I C. 486.**

———*Alienation — Widow — Necessity — Daughter's marriage.*

There is no legal necessity for a widow to mortgage the estate to secure funds for her daughter's marriage, until the marriage has been fully settled. (*Miller*, C.J. *and Foster*, J.) RAMYAD PANDAY *v.* RAMBIHARA PANDE.

4 Pat. L.J. 734=54 I C. 357= 1920 Pat. 33.

———*Alienation—Widow—Necessity—Payment of rent.*

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Payment of rent is clearly a legal necessity but a sale of immoveable property for the purpose of discharging an obligation to pay rent is not necessarily justified on such grounds and unless it can be shown that there was no other ostensible means of satisfying a rent decree except by allowing the property to be sold at auction, it cannot be held that the sale of the property as distinguished from the obligation to pay the rent decree was justified by legal necessity. 13 C.W.N. 544, Ref. (*Miller*, C.J. *and Adami*, J.) MUSSAMMAT DHANIA *v.* HAKAYAT PANDEY, **52 I.C. 316.**

———*Alienation—Widow—Necessity — Test of.*

The pressure on the estate, benefit conferred on it, and the needs of those entitled to maintenance should be considered in considering the question of legal necessity. (*Atkinson and Manuk*, JJ.) DHUMUNMIRAIN *v.* NIRSU OJHA. **50 I.C. 105.**

———*Alienation—Widow—Necessity—Proof of—Recitals, value of.*

Recitals in a document are not always sufficient to prove legal necessity. (*Roe and Coutts*, JJ.) BISHEN DAYAL SINGH *v.* MT. JAISAI KUER. **48 I.C. 746=1918 Pat. 323.**

———*Alienation—Widow—Necessity—Gaya Shradh.*

The performance of a Gaya Shradh is a legal necessity which will justify an alienation if it is shown that the expenses of the Shradh could not have been met out of the funds in the hands of the widow. (*Roe and Coutts*, JJ.) BABU BISHEN DAYAL SINGH *v.* MT. JAISERI KUER. **48 I.C. 746=1918 Pat. 323.**

———*Alienation—Widow—Necessity — Enquiry—Recitals.*

Actual existence of necessity is not necessary to justify an alienation by a Hindu widow. It is enough if a representation had been made to the purchaser as to the existence of necessity and he had acted honestly after satisfying himself by proper inquiry. Recitals are evidence of the representation and when proof of enquiry has become impossible owing to lapse of time, the recital coupled with the other circumstances would be sufficient to support the alienation. (*Chapman, Atkinson and Ali Imam*, JJ.) BAHADUR *v.* JAGERNATH PRASAD

(1918) Pat 181=3 Pat. L.J. 199= 45 I.C. 749=4 Pat. L.W. 377 (F.B.).

———*Alienation—Widow—Necessity—Onus—Costs of litigation.*

Under Hindu Law the onus of proving the necessity for a loan contracted by a limited owner is on the lender and to discharge this onus he must show not merely that the object of the loan was a legitimate one but also that the funds available to the limited owner were insufficient to meet the necessity. If he fails to prove legal necessity he can still succeed by

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showing that he made enquiries and was honestly satisfied that such necessity existed. Costs of litigation are a recognised head of necessity but the power to borrow therefor is limited. (*Miller*, C.J. *and Ali Imam*, J.) RADHA KISHAN RAI *v.* NAURAUTAN LAL
46 I.C. 627=3 Pat. L.J. 522.

———*Alienation — Widow — Necessity — Marriage of daughter.*

The marriage of a daughter is a religious act, the expenses of which should be charged by the widowed mother on the husband's property. (*Sharfuddin and Roe*, JJ.) NARAIN BAKTI KUNWARI *v.* RAM DHARI SINGH.
20 C.W.N. 734=1 Pat. L.J. 81=34 I.C. 277=3 Pat. L.W. 317.

———*Alienation — Widow — Necessity — Maintenance.*

Where the income is not sufficient for the widow's future maintenance she can alienate for that purpose. She is not bound to wait till she incurs debts for such maintenance. She must be allowed some latitude as in the case of the manager of a family. (*Pratt*, J.C. *and Fawcett*, A.J.C.) MOTI SINGH *v.* SOBHO MAL. **30 I.C. 963=9 S.L.R. 69.**

Alienation—Widow—Relinquishment.

———*Alienation—Widow—Relinquishment.*

Alienation with consent of the next heirs may be supported as a relinquishment and consequent acceleration of the interest of the consenting heirs. But the alienation must be due of the whole estate. (40 Cal. 721, Ref.) Such relinquishment is valid though the widow obtained a benefit thereby. (10 Cal. 1102, Foll.) 30 All. 1, Ref. (*Richardson and Fletcher*, JJ.) SURESSUR MISSER *v.* MOHESH RAM MESRAIN. **31 I.C. 983=20 C.W.N. 142.**

Alienation—Widow—Rights of Alienee.

———*Alienation—Widow—Rights of alienee—Mortgage—Improvements by mortgagee.*

Where a mortgagee with possession from a Hindu widow spends money in improving the property and a reversioner sues to set aside the mortgage on the death of the widow, the mortgagee is entitled to be reimbursed for improvement. In any event the mortgagee is entitled to remove what he has placed on the property at his own expense. (*Macleod*, C.J. *and Crump*, J.) SIDDAPPA MAHALINGAPPA *v.* PANDURANG VASUDEO. **47 Bom. 696=25 Bom. L.R. 395=1923 Bom. 385.**

———*Alienation — Widow — Rights of alienee.*

When there is nothing to show that legal necessity for a transfer by a widow did not exist, the rule of *caveat emptor* does not apply as against the transferee. (*Seshagiri Aiyar and Bakewell*, JJ.) BALUSU VEERARAGHAVALU *v.* BOPPANA MANIKYAM. **31 M.L.J. 380=35 I.C. 92=20 M.L.T. 329.**

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———*Alienation—Widow—Rights of alienee—Possession of alienee, if wrongful.*

A Hindu widow's alienation is only voidable and the alienee's possession cannot be wrongful until the reversioner signifies his intention to avoid the transfer. (*Kotwal*, A.J.C.) RAIJI *v.* SHRIRRAM. **59 I.C. 868.**

———*Alienation—Widow—Rights of alienee—Consideration—Not party binding—Liability of purchaser for mesne profits.*

If a sale by a Hindu widow of her husband's property is partially invalid owing to want of legal necessity the whole sale must be set aside and the purchasers should restore mesne profits for the period that they have been in possession. 13 C.W.N. 544 (P.C.) Ref. (*Jwala Prasad*, J.) DHONDHIA *v.* HEKYAT PANDEY.
49 I.C. 841.

Alienation—Widow—Setting aside.

———*Alienation—Widow—Setting aside—Improvements—Mesne profits—Set off.*

Where an alienee from a Hindu widow effected permanent improvements on the property which resulted in an increased rental and the alienation was set aside by the reversioner on the death of the widow, the Court can set off against the mesne profits awarded to the decreeholder the increased rent that was due to the improvements, even though the person in possession had not actually executed the improvements at the moment when the decree for possession was made. (*Lord Buckmaster*). BARHAM DEO NARAIN SINGH *v.* RAM RATAN SAHU. **L.R. 3 P.C. 20.**

———*Alienation — Widow—Setting aside—Reversioner's suit.*

A presumptive reversionary heir alone may bring a suit for declaration that an alienation by a widow was not binding on the reversioners. If such nearer heir has precluded himself by his own acts a remoter heir may sue. A presumptive necessary heir's failure in one suit does not preclude him from suing again on a subsequent alienation and then the remote heirs cannot sue. (*Lord Dunedin*). JHANDU *v.* TARIF.
37 All. 46=19 C.W.N. 197=21 C.L.J. 26=28 M.L.J. 453=17 M.L.T. 10=2 L.W. 113=17 Bom. L.R. 44=27 I.C. 892=(1918) M.W.N. 394 (P.C.).

———*Alienation — Widow—Setting aside—Delay—Effect of.*

Considerable delay in the institution of a reversioner's suit for declaration that an alienation by the widow is invalid and for possession cannot prejudice the plaintiff's claim if the suit is within time and delay is reasonably explained. (*Lord Moulton.*) SREEMUTTY MANO KARANI DEBI *v.* CARAPADA MITTER. **21 I.C. 311=18 C.W.N. 718 (P.C.).**

———*Alienation—Widow — Setting aside—Suit by remote reversioner—When lies.*

A remote reversioner cannot maintain a suit for a declaration that an alienation by a widow

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is not binding on the reversioners unless the nearer reversioners are in collusion with the widow or have precluded themselves from interfering. The minority of the nearest reversioner does not in itself entitle a distant reversioner to maintain a suit. 6 Cal. 764, (P.C.), Ref. (*Piggott and Walsh*, JJ.) GUMANAN *v.* JAHANGIRA. **40 All. 518=46 I C. 183=16 A L J. 465.**

———*Alienation—Widow—Setting aside—Equities—Duty to refund consideration.*

If it has been proved that a sale by a widow having a limited interest, has benefited the estate by the payment of debts which were binding on it, although the amount paid may not amount to the whole of the consideration money received for the property sold, the Court, when it sets aside the sale, will direct payment to the alienee to the extent of the benefit received by the estate, and it must follow that if the consideration money for the sale is found intact at the death of the widow, the estate has benefited to that extent. So that if the reversioner after the widow's death wishes to have the sale by her set aside, he can only succeed if he restores the money. It would be different if it could not be proved that the purchase-money was still intact in the estate. (*Macleod*, C.J *and Coyajee*, J.) SOMESHVAR JETHABAI DAVE *v.* SOMESHWAR GOVINDRAM JOSHI. **24 Bom. L.R. 493=1923 Bom. 16.**

———*Alienation—Widow—Setting aside—Position of stranger as regards alienations.*

A mortgagee from a widow cannot challenge the rights of the alienee of the equity of redemption from a Hindu widow since an alienation by the widow is only voidable at the instance of the reversioners. (*Macleod*, C. J. *and Heaton*, J.) SITARAM *v.* KHANDU. **22 Bom. L R. 1153=59 I.C. 480=45 B. 105.**

———*Alienation—Widow—Setting aside—Voidable not void.*

A conveyance by a Hindu widow, when it is not for legal necessity, is not void but voidable that is, capable of being avoided. Such a conveyance cannot be avoided at the instance of a person having no interest in the matter but only by her reversionary heirs. (*Fletcher and Duval*, JJ.) JAGAT CHANDRA CHOWDHURY *v.* BISHWAMBHAR ROY. **55 I.C. 743.**

———*Alienation—Widow—Setting aside—Form of relief.*

Where an alienation by a widow is set aside, reversioner is not bound to refund the amount not found to be for necessary purposes. (*Walmsley and Greaves*, JJ.) CHAIRMAN, BALLY MUNICIPALITY *v* PRAMATHA NATH MOOKERJEE. **41 I.C. 776.**

———*Alienation—Widow—Setting aside—Voidable.*

A sale by widow is only voidable at the instance of reversioners, and a purchaser under such a sale can sue in ejectment after the death of the widow. (*Chatterjee and Newbould*, JJ.) MAHENDRA CHANDRA DATTA *v.* ABHOY CHARAN SARMA. **40 I.C. 355.**

———*Alienation—Widow—Setting aside—Void or voidable—Binding against all but reversioners.*

An alienation without legal necessity by a Hindu widow is voidable and not void, so that until a reversioner, including the ultimate reversioner, *viz*, the crown, elects to avoid it or treat it as a nullity, it stands good. (*Coxe and D. Chatterjee*, JJ.) DEO NANDAN PRASAD *v.* UDIT NARAYAN SINGH. **23 I.C 298=18 C.W N. 940.**

———*Alienation—Widow—Setting aside—Right, if personal to reversioner—Alienee from reversioner.*

The right to avoid an alienation effected by a Hindu widow is not personal, to the reversionary heirs and a transferee from them may exercise it. An alienation by a widow is not absolutely void, it is *prima facie* voidable at the election of the reversionary heirs. There is nothing for the Court either to annul or cancel as a condition precedent to the reversioner's right of action. They may, if they think fit, affirm the transaction or they may, at their pleasure, treat it as void without the intervention of Court. (*Mookerjee and Beachcroft*, JJ.) NISHAKAR CHAKRAVARTI *v.* RAM KUMAR TEWARI. **16 I.C. 634.**

———*Alienation—Widow—Setting aside.*

An after-born son divests the estate from the time of his birth and an alienation by widow before his birth is valid, if made for necessity. (*Scott-Smith and Martineau*, JJ.) HIRA *v.* BULA. **49 P.W.R. 1920=1 Lah. 128=56 I.C. 256=1 Lah. L.J. 36.**

———*Alienation—Widow—Setting aside—Liability to compensate alienee for improvements on the alienated property.*

A reversioner, suing for possession of property alienated by the last limited owner, need not compensate the alienee for unnecessary improvements and repairs, such as building a temple on the property, unless the reversioner is proved to have acquiesced. The alienee may be allowed to remove the materials of improvement. 20 Bom. 398, Foll. (*Ratligan and Chitty*, JJ.) MATHU MAL *v.* KEDAR NATH. **36 I.C. 62=77 P.L.R. 1916.**

———*Alienation—Widow—Setting aside—Right of reversioners.*

In spite of the existence of a daughter, reversioners of a deceased Hindu, can sue for a declaration that an alienation made by the widow shall not affect their reversionary rights. 17 I.C. 379, Dist. (*Johnstone*, C.J. *and Chevis*, J.) TEK CHAND *v.* SOMAN SINGH. **27 P.R. 1916=147 P.L.R. 1916=34 I.C. 831=218 P.W.R. 1916.**

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———*Alienation—Widow — Setting aside—Settlement in favour of daughters—Alienation by daughters—Suit by grandsons—Maintainability—Limitation.*

Under a settlement by a Hindu widow in favour of her two daughters each of them purported to take absolutely a moiety of the estate. They subsequently made various alienations of the property without any justifying necessity. The elder daughter died first in 1905 and the younger daughter died in 1908. In a suit instituted in 1918 by the grandsons of the last male owner for recovery of the property from the alienees on the ground that the alienations were not supported by legal necessity. *Held*, that under Art. 141 of the Limitation Act, the period of limitation began to run only from the date of the death of the surviving daughter and that the suit was not barred. (*Spencer and Devadoss*, JJ.) JOGA VEERAYYA *v.* NAKINA SALLAYYA.
16 L.W. 752 = 1923 Mad. 168.

———*Alienation—Widow — Setting aside—Suit by one of two reversioners for recovery of the property—Other reversioner impleaded as defendant — Decree for a share—Partition suit.*

Where one of two reversioners sues to recover his share of properties alienated by the widow impleading the other as deft. and the latter offered to pay Court-fee on his share and prayed for a decree purporting to follow the procedure open to a co-sharer deft. in a suit for partition of joint property. *Held*, that the scope of the present suit was different from that of a suit for partition and that it was not open to the Court to give a decree in favour of the deft. for his share of the property. (*Oldfield and Bakewell*, JJ.) DHIKARI VISHNU MURTHIAYYA *v.* AUTHAIYA.
47 I.C. 633 = 35 M.L.J. 153.

———*Alienation—Widow — Setting aside—Necessity for substantial portion— Decree—Form of.*

The proper course in a case where a substantial portion of the consideration is for necessity is to allow purchaser to retain the property on payment of the portion of purchase-money not proved to be intended for necessity. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) AWASARALA SESHAMMA *v.* RAVU VENKATA KRISHNARAYANIMGARU.
(1916) 1 M.W.N. 163 = 33 I.C. 833 = 3 L.W. 413.

———*Alienation—Widow — Setting aside—Rights of alienee—Previous conditional sale by husband.*

If it is found that a widow executed an out and out sale-deed incorporating a previous conditional sale-deed by the husband, the alienee and his representatives can fall back on their rights under the conditional sale-deed if the sale-deed by the widow is set aside. 35 All. 211; 1 Mad. 1, Foll. (*Ayling and Sadasiva Aiyar*, JJ.) & KANTHU *v.* DASA UPADHYA.
26 I.C. 876.

———*Alienation—Widow— Setting aside—Major portion binding—When binding on reversioners.*

When the greater portion, *viz.*, Rs. 1,022 of the consideration for a sale *viz.*, Rs. 1,300 by a Hindu widow is for a legal necessity and the price paid is not unreasonably low the sale is binding on the reversioners. (*Miller and Tyabji*, JJ.) THALAGARA RAMMANNA *v.* KALAGARA GANGAYYA.
26 I.C. 178 = 27 M.L.J. 132.

———*Alienation—Widow— Setting aside—Major portion of consideration binding.*

Where a portion of the consideration for a sale by a Hindu widow was found to be not binding on the estate the transferee may retain the property and pay that part of the consideration to the reversioner. 14 C.W.N. 895, Foll. (*Miller and Tyabji*, JJ.) THALAGARA RAMMANNA *v.* KALAGARA GANGAYYA.
23 I.C. 778.

———*Alienation—Widow—Setting aside—Equities—Form of decree.*

A reversioner suing to declare an alienation by the widow invalid is not liable to have his suit dismissed if he has not offered in his plaint to pay that portion of the amount found to be a good charge on the reversion. 31 Mad. 153, Not foll. The decree must be confined so as to bind the plaintiff. It should not also be so as to benefit and bind the actual reversioner at the time of the widow's death. (*Sadasiva Aiyar and Tyabji*, JJ.) ARUNACHELA GOUNDEN *v.* KUPPUNADHA GOUNDEN.
14 M.L.T. 391 = 21 I.C. 562 = (1913) M.W.N. 866.

———*Alienation—Widow— Setting aside—Reversioner, suit by, for possession as survivor—Declaration of reversionary right, if can be granted.*

Where a reversioner brought a suit as the survivor of the deceased for possession of the property alienated by the widow and failed to establish the survivorship, he should not be allowed to change his cause of action, and ask for a declaration that the alienation should not affect his right as reversioner. (*Sundara Iyer*, J.) *In re* VALLAPPA GOUNDAN.
13 I.C. 610 = (1912) M.W.N. 196.

———*Alienation—Widow — Setting aside sale—Effect of.*

Where a reversioner sued for lands alienated by a widow during her lifetime, no compensation can be awarded to the alienee for any excess in the extent of land discovered in the sale deed. The alienee however was entitled to interest at 6 per cent. on the purchase-money

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from the date of the widow's death. (*Sundara Aiyar and Spencer*, JJ.) NALLASAWMY PILLAI *v.* RAMASWMY PILLAY.

13 I.C. 430.

———*Alienation — Widow—Setting aside—Reversioner—Rights of.*

An alienation by a Hindu widow of the estate or a portion of the estate is not void *ab initio* but is only voidable if it transgresses the limitations imposed by the Hindu Law on the power of alienation. The death of the alienor does not necessarily render the alienation inoperative. 25 C. 1 (P.C.), Ref. (*Wazir Hasan*, A.J.C.) BAHADUR SINGH *v.* SULTAN HUSAIN KHAN. **8 O.L.J. 535=3 U.P.L.R. (J.C.) 83= 1922 Oudh 171.**

———*Alienation— Widow—Setting aside—Rights of reversioners—Mesne profits.*

Where a Hindu reversioner sues to recover property alienated by a Hindu widow, he is entitled to mesne profits from the death of the widow. A voidable transaction is good as against third parties till it is set aside but as regards the person who has the right to avoid if it is in a state of suspense until such party exercises his option. (*Daniels and Lyle*, A.J.Cs.) SAIYID MAHOMED HADI *v.* MT. PARBATI. **9 O.L.J. 312=25 O.C. 2= 1922 Oudh 91.**

———*Alienation — Widow—Setting aside—Decree—Form of.*

When the major portion of the purchase money is proved to be paid for necessity the alienation must be upheld. Otherwise the reversioner will get possession on his paying the binding portion of the consideration. (*Kendall*, A.J.C.) BUNIYAD HUSAIN *v.* MATADIN SINGH. **3 O.L.J. 313=36 I.C. 57= 19 O.C. 122.**

———*Alienation—Widow — Setting aside—Rights of reversioner—Option to avoid.*

In the case of an alienation by a limited owner not justified by necessity, the reversioner may treat the alienation which purports to extend beyond the life of the limited owner as a nullity and he may sue for possession at any time within 12 years of the death of the limited owner without first seeking to set aside the transfer in favour of the deft. In other words if he elects to treat the transfer as a nullity after the death of the limited owner he may do so and there is nothing left in such a case to be set aside and he may sue for possession and is entitled to obtain possession. All that is necessary for the reversioner is to exercise his option and he may do so by merely bringing a suit to claim possession. From the moment the reversioner exercises his option there is nothing left in the transferee. There are more ways than one by which a tenancy may determine. The limited owner has no power to grant a tenancy beyond her own life as against the reversioner and once the reversioner elects to treat the interest granted to the tenant as an interest extending only for the life-time of the grantor then in such a case it terminates upon the death of the grantor and there is nothing more to be done to terminate the tenancy. (*Miller*, C.J. *and Mullick*, J.) RAGHUBAR SINGH *v.* JETHU MAHTON. **1922 Pat. 383=4 P.L.T. 396= 2 P. 171=1923 P. 130.**

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———*Alienation—Widow— Setting aside—Grant of permanent leases.*

The mere grant of *darmukurari* leases or creation of rent-free brahmottar grants or causing a portion of private lands to be converted into a raiyati lands is not waste. Such acts are not binding on the reversioner. (*Roe and Coutts*, JJ.) RANI KISHO BATI KUMARI *v.* KUMAR SATYA NARAIN SINHA.

5 Pat. L.W. 167=47 I.C. 55= 1918 Pat. 294.

———*Alienation— Widow—Setting aside—Necessity partial—Suit by reversioner—Form of decree.*

Where a Hindu widow made an alienation of her husband's estate a reversioner can sue to declare that it is partially valid and partially void as against the reversionary rights. 37 Mad. 275; 35 Cal. 420 (P.C.), Rel. The proper form of a decree is to declare that the alienation should affect the reversionary rights only to the extent to which legal necessity is proved and is otherwise invalid. 4 Cal. 190 (P.C.), Ref. (*Pratt*, J.C. *and Fawcett*, A.J.C.) MOTHI SINGH *v.* SOBHO MAL.

30 I.C. 968=9 S.L.R. 69.

———*Alienation— Widow—Setting aside—Moveables.*

A widow is entitled to dispose of her moveable property in any manner she pleases whether such property is stridhan or inherited from males. 4 S.L.R. 77; 8 I.C. 214, Foll. (*Hayward*, A.J.C.) RATANSI *v.* UMREBAI.

9 I.C. 997.

Alienation—Widow—Surrender.

———*Alienation— Widow — Surrender — Partial.*

Where on an alienation by a widow of the estate to the next reversioners, a portion of the property is given back to the widow for her lifetime, the life estate she enjoys in the property so given is essentially different from a widow's estate and could not be construed as a reservation or restoration of the widow's estate. (*Richardson and Fletcher*, JJ.) SURESSUR MISSER *v.* MOHESH RANI MESRAM.

31 I.C. 983=20 C.W.N. 142.

———*Alienation — Widow — Surrender — Partial.*

A surrender of a partial interest may be a valied alienation if there is consent of the whole

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body of reversioners. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) MULUGU KOTAYYA *v.* MUDIGONDA CHANDRAMOWLI SASTRI.
20 M L.T. 148 = 4 L W. 149 = (1916) 2 M.W.N. 137 = 36 I.C. 407 = 31 M.L.J. 406.

[This is on longer law. *See* 50 I.C. 498 = 42 Mad. 523 (P.C.)]

———*Alienation — Widow — Surrender — Effect of.*

A subsequent surrender by widow of her estate in favour of reversioners does not affect the rights of a prior mortgagee from her. (*Sadasiva Aiyar and Napier*, JJ.) KOTTAPALLI SUBBAMMA *v.* GATAVALLABHULA.
39 Mad. 1035 = 32 I.C. 813 = 30 M.L.J. 260.

———*Alienation — Widow — Surrender — Effect of.*

The validity of the alienation made by a Hindu widow cannot be affected by a subsequent relinquishment of the estate by her to the reversioner. (*Wallis*, O.C.J. *and Hannay*, J.) SINGARAM CHETTIAR *v.* KALYANASUNDARAM PILLAI. 1 L.W. 687 = 26 I.C. 1 = (1914) M.W.N. 735.

———*Alienation—Widow—Surrender— Reconveyance.*

An alienation by a Hindu widow of the whole of her property to the next reversioner on the latter's undertaking to recover a portion thereof to the widow of her nominee is valid whether consideration actually passed or not, (31 Mad. 44, Appl.) (*Miller and Abdur Rahim*, JJ.) KARETTI BRAHMANACKUDU *v.* KARETTI MAHALAKSHMI. 24 M L.J. 533 = (1913) M.W.N. 433 = 17 I C. 487 = 13 M L.T. 468.

Alienation—Widow--Transfer of Right, title and interest.

———*Alienation—Widow—Transfer of right, title and interest.*

Where a Hindu widow in possession of her husband's property conveys a portion of the property after reciting circumstances of necessity such as would give her power to dispose of her absolute interest and the words of conveyance referred to all her existing right, title and interest in the property, *held*, that the words were wide enough in the circumstances to dispose of the absolute interest. (*Lord Atkinson.*) THAKUR VASONJI MORARJI *v.* CHANDA BIBI. 37 All. 369 = 17 Bom. L R. 556 = 18 M L T. 31 = 19 C.W.N. 873 = (1915) M.W.N. 449 = 2 L.W. 676 = 22 C.L.J. 180 = 29 I C. 781 = 29 M.L.J. 130 (P.C.)

Alienation—Widow—Will.

———*Alienation—Widow—Will.*

A Hindu widow cannot make a will in favour of a person so as to confer a title upon him even when there are no heirs of her husband,

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capable of taking the estate after her death. (*Broadway and Abdul Raoof*, JJ.) TIRATH RAM *v.* MUSSAMMAT KHAN DEVI.
60 I.C. 101 = 1 Lah. 538.

Alienation—Will.

———*Alienation—Will—Subsequent birth of son.*

Where the head of a *mitakshara* Hindu family makes a will, the subsequent birth of a son, who thereupon becomes a co-parcener in the family estate, renders the will inoperative. It becomes absolutely void and not merely voidable. (*Mitra and Prideaux*, A.J.Cs.) GULAB DAS *v.* THAR MIN BAI. 36 I.C. 996.

Ancestral Estate.

See HINDU LAW—(1) ALIENATION.
(2) JOINT FAMILY.

Ancestral Property.

See HINDU LAW—ANCESTRAL ESTATE.

Antecedent Debt.

See HINDU LAW—(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

Apostacy.

See (1) HINDU LAW—SUCCESSION.
(2) CASTE DISABILITIES ACT.

Applicability.

See also HINDU LAW—CONVERSION.

———*Applicability—Aboriginal Bhuiyas—"Chowrasi" gadis—Succession—Adoption—Special custom—Property situate in Santhal Parganas—Bhagalpur Court—Jurisdiction—Regulation III of* 1872.

The holders of "Chowrasi" gadis, of which Lachmipur Raj is one claim to be Surjabansi Rajputs and as such high caste Hindus. They are really descendants of aboriginal Bouiyas who had become Hindus long ago. On the question whether an adopted son succeeds to the gadi, either by law or custom. *Held*, that this claim of Chowrasi gaditshad adopted in general, not only Hindu religion and Hindu social usages, but also the Hindu Law regulating succession to landed property, though they still retain some relics of non-Hinduism. (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. 44 M.L J. 476 = 32 M.L.T. (P.C.) 121 = 4 Pat. L T. 217 = 2 Pat. 280 = 37 C.L J. 369 = 18 L.W. 597 = (1923) M W.N. 377 = 27 C.W.N. 901 = 25 Bom. L R 560 = 50 I.A. 58 1923 P.C. 21 (P.C.).

———*Applicability—Halai Memons of Porebunder.*

There are among the Mahomedans certain groups whose ancestors were Hindus and profes-

sed the Hindu religion and were then converted to Islam. Among these groups may be reckoned, as is shown by decided cases, Khojas, Suni Borahs, Molesalam Girasias, Cutchi Memons, Nassapooria Memons and lastly, Halai Memons. Halai Memons domiciled in Porebunder follow the Hindu law with regard to the succession of females. (*Lord Dunedin.*) KHATUBAI *v.* MAHOMED HAJI ABU.

37 C L J. 131=25 Bom. L.R. 127=17 L W. 208=44 M.L.J. 35=38 M.L T 45=47 B. 146=50 I A 108=27 C.W N. 774 (P.C.)=1922 P.C. 414.

———*—Applicability—Labbais of Coimbatore—Custom, proof of.*

Labbais of Coimbatore who are Hindu converts to Muhamadanism are *prima facie* governed by Mahomedan Law in matters of succession and the Hindu law rule excluding women from succession except in specified cases does not apply to the Labbais. The evidence in the case was held not sufficient to support the plea of a special custom to that effect. (*Sir Lawrence Jenkins.*) MAHOMED IBRAHIM ROWTHER *v.* SHAIK IBRAHIM ROWTHER. **45 Mad. 308=43 M.L.J 69=(1922) M.W.N. 470=36 C.L J. 64=24 Bom. L.R. 944=30 M L.T. 85=16 L.W. 354=L R. 3 P.C. 149=26 C.W.N. 793=49 I.A. 119=1922 P.C. 59 (P.C.).**

———*—Applicability of—Migrating family—Bombay School—Daughter succeeding—Absolute inheritance.*

A Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognised in that Province. But this law is not merely a local law. It becomes the personal law, and part of the status of every family which is governed by it; consequently where any such family migrates to another Province governed by another law, it carries its own law with it. A member of such a family is governed by the original personal law of the family, unless it can be shown that the original law has been renounced in favour of the law of the place to which he or his family migrated. Persons who or whose ancestors have emigrated from the Bombay Presidency to the Central Provinces are *prima facie* subject to the law as expounded in Bombay. According to that law the daughter succeeds to the father in an absolute inheritance. The decisions of the Bombay Courts merely declared the law as it has existed as a custom in the Maharatta country and therefore governed these migrating families: 1 Bom H.C.R. 130; 1 Bom. H.C.R 117; 5. Bom. 662 at 671; 30 Bom. 229; 1 N.L.R. 154. Overruled. (*Lord Dunedin.*) BALWANT RAO *v.* BAJIRAO.

12 L.W. 679=16 N.L.R. 187=39 M.L.J. 166=18 A.L.J. 1049=(1920) M.W.N. 483=28 M.L.T. 157=22 Bom. L.R.1070=47 I.A. 213=57 I.C. 545 48 Cal. 30 =26 C.W.N. 248 (P.C.),

———*—Applicability — Migrating family—Nagar Brahmins—Mayukha.*

Where a family of Nagar Brahmins of Gujarat was domiciled for over a century in Benares, and they were ignorant of any rules to be found in the Mayukha commentary and were unable to prove a single instance of special succession under the Mayukha, *held*, that the family was governed by the Mitakshara Law prevailing in Benares. (*Rafique and Lindsay*, JJ.) LAKSHMI RAM JANI *v.* HARI RAM DUBE. **52 I C. 25=1 U.P.L.R. (H.C.) 13.**

———*—Applicability—Jats.*

Jats are governed by Hindu Law in the absence of special custom. The onus of proving a special custom is on the person setting it up. In the U. P. of Agra and Oudh there is no custom of exclusion of daughters among Jats. They are treated as Hindus for the purposes of S. 37, Bengal N. W. P. and Assam Civil Courts Act. (*Tudball and Rafique*, JJ.) MUSAMMAT BHAGWANI *v.* KHUSHI RAM. **24 I.C. 982.**

———*—Applicability — Jats — Inheritance—Custom—Exclusion of daughters and daughter's sons.*

There is no custom among Jats of Sardhana *Tahsil* Meerut District which excludes daughter's and daughter's sons from inheritance. (*Karamat Hussain and Tudball*, JJ.) NAULI *v.* KHERI. **15 I.C. 607.**

———*Applicability — Halai Memons—Bombay.*

The Halai Memons of Bombay, unlike those of Kathiawar, are governed by Mohammadan law in matters of succession. 21 Bom. L.R. 85, foll. (*Marten and Fawcett*, JJ.) SIR MAHOMED YASUF *v.* HAR GOVINDAS JIVAN. **24 Bom. L.R. 753=47 B. 231=1922 Bom. 392.**

———*Applicability—Migrating family—New domicile—Effect of.*

Severance from the domicile of origin and permanent residence in Bombay would, in the case of persons falling within the purview of the Indian Succession Act, effect a change of domicile and with it a change of law, *e g.*, from French to Anglo-Indian or Portguese to Anglo-Indian but it would not change the law of succesession for Hindus or Mahomedans. A Hindu or Mahomedan who renounces his domicile of origin does not thereby subject himself to the law of his domicile of choice. (*Scott*, C.J. *and Macleod*, J.) MAHOMED AJI ABU *v.* KHATU BAI. **43 Bom. 647=51 I.C. 513=21 Bom. L.R. 85.**

———*—Applicability of—Migrating family—Principle, if applicable to Muhammadans.*

Where a Hindu family migrates from one part of India to another, *prima facie*, they carry with them their own personal law, and if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted. But when a Mahomedan family governed by the

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Hindu law of succession as a custom migrate to another country and settle among Mahomedans, the presumption that they have accepted the law of the people whom they have joined is one much more readily made. The analogy in the latter case is that of a change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India. (*Viscount Haldane.*) ABDURRAHIM HAJI *v.* HALIMABAI. **320 M L J. 247 = 20 C.W.N. 262 = 43 I.A. 35 = 18 Bom. L R. 635 = 32 I.C. 413 = (1916) 1 M.W.N. 176 (P.C.)**

———*Applicability—Burden of proof.*

One who sets up a different law or custom for Hindus than the Hindu law must prove it. (*Beaman and Macleod*, JJ.) DAHYABHAI MOTIRAM *v.* CHUNNILAL **38 Bom. 183 = 22 I.C. 289 = 15 Bom L.R. 1136.**

———*Applicability—Coversion to Mahomedanism—Evidence Act, S. 102.*

A Hindu convert to Mahomedanism is presumed by the very act of the conversion to have abandoned Hindu law and usage to which he was subject, and those who allege that the Hindu law and usage has been retained must prove it. (*Chandavarkar and Heaton*, JJ.) BAI MACHHUBAI *v.* BAI HIRABAI. **35 Bom. 264 = 10 I C. 816 = 13 Bom. L.R. 251.**

———*Applicability*—Rajbansis.

Rajbansis are governed by the ordinary Hindu Law. (*Ghose and Panton*, JJ.) SANTALA BEWA *v.* BUDASWARI DASI. **50 Cal. 727 = 27 C.W.N. 669 = 1924 Cal. 98.**

———*Applicability — Migrating family—Mithila School—Dayabaga Law.*

A Hindu family, residing in a particular province of India, is presumed to be governed by the law of the place where it resides. 20 C. 409. Ref. to. This presumption is rebutted, where the family is shown to have migrated from one province to another. The presumption then arises that the family carried with it the laws and customs as to the succession and family relation prevailing in the Province from which it came. 12 Moo. I A. 81 ; 29 C. 433, referred to. Thereafter the burden shifts and lies upon those who assert it to prove that the family after migrating has adopted the law and usages of the place to which it has migrated, 31 A. 477 ; 24 M. 650 ; 40 C. 407; 34 B. 553, referred to. Where however it is proved by numerous instances of succession in the family and evidence of the observance of right and ceremonies at marriages, births and deaths which indicates the relinquishment of Mithakshara law and the adoption of the Dayabaga Law in the family, the Court would act upon such evidence and infer that the family had adopted the Dayabaga law. The Hindu law is not merely a local law but is essentially a personal law, an integral factor of the status of every family which is governed by it. In its new domicile, the family may, by the reflex action

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of manners and customs prevalent in resident families, consciously or unconsciously, modify its own governing rules ; there may thus be an acceptance of a new law not due to sudden change by choice or agreement, but by the gradual evolution of a family usage. When a new family usage has thus grown up in the courge of generations possibly with the concurrence or acquiescence of families of the same group, that furnishes the governing law of the family. 29 C. 433 ; 43 I.A. 35 ; 47 I.A. 213, followed. (*Mookerjee and Cuming*, JJ.) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. **50 Cal. 370 = 37 C L J. 233 = 1923 Cal. 485.**

———*Applicability — Brahmos — Whether Hindu—Declaration under Act III of* 1872.

A man by becoming a Brahmo does not necessarily cease to be a Hindu, that is to say something further than mere becoming a Brahmo is necessary for a man to out himself off from Hinduism. A declaration under Act III of 1879 is effective only for the purposes of the Act and does not involve a renunciation of the Hindu religion. (*Greaves*, J.) *In the goods of* JNANENDRA NATH ROY. **49 Cal. 1069 = 26 C.W.N. 799 = 1923 Cal. 265.**

———*Applicability of—Aboriginal tribes—Kacharies.*

The Aboriginies (Kacharies) of Assam are governed by the Dayabaga Law. (*N R. Chatterjea and Pearson*, JJ.) NEARAM KACHARI *v.* ARDARAM KACHARI. **64 I.C. 148 = 35 C L J. 34.**

———*Applicability of—Migrating family—Presumption—Adherence to religious and social rules of the place of origin—Effect of—Brahmins and Kayasthas of Bengal—Dayabhaga Law.*

A Hindu family residing in a particular Province of India is presumed to be governed by the law of the place where it resides but where a Hindu family, is shown to have migrated from one place to another the presumption is that it carries with it the laws and customs as to succession and family relation prevailing in the province from which it came. This presumption, however, is rebuttable by evidence that the family has adopted the law and usages of the place to which it has migrated. The Brahmins and Kayasthas of Bengal migrated from Kanauj and originally brought with them the Mithila law ; it was after their settlement in this province that the Dayabhaga school of Hindu Law was founded by Jimutvahana about the 14th century and that is the law which now governs the Hindu population of Bengal even though they may have originally migrated from North Behar. Instances of succession consistent with the Mitakshara and inconsistent with the Dayabhaga Law or evidence that the family had conformed to religious and social rites and usages consistent with the Mitakshara and inconsistent with the Dayabhaga law may shift the burden. A Hindu family which has migrated into Bengal

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and had retained some of its former religious rites and ceremonies may yet be shown to have acquired a course of devolution of property in accordance with the Dayabhaga Law. (*Mookerjee and Panton*, JJ.) PITAMBAR CHANDRA SAHA *v.* NISHI KANTA SAHA.
24 C.W.N. 215=55 I.C. 5=31 C.L.J. 52.

———*Applicability — Koches of Assam—Aboriginals.*

The Koches (aboriginals) of Assam are governed by the Dayabhaga Law in the absence of proof of a custom at variance therewith. 11 B.L.R. 131, Ref. *Mookerjee and Panton*, JJ) OFFICIAL ASSIGNEE OF BENGAL *v.* BIDYA-SUNDARI DASI. **24 C.W.N. 195= 54 I.C. 700=30 C.L.J. 428.**

———*Applicability — Migrating family — Personal law.*

A person migrating from one place to another is presumed to carry the laws and customs as to succession and family relations along with him. (29 Cal. 433, Foll.) Such presumption, however, may be rebutted, by proof of adoption of the law of the place to which he migrates. (12 M.I.A. 81; 31 All. 477; 34 Bom. 553, Foll.) (*Mookerjee and Beachcroft*, JJ.) KULADA PRASAD PANDEY *v.* HARIPADA CHATTOPADHYAYA. **40 Cal. 407=16 C L J. 311= 17 I.C. 257=17 C.W.N. 102.**

———*Applicability—Koch tribe—Nowgong in Assam.*

Where there are no averments to the contrary in the pleadings no contrary indication in the evidence, the Kooh tribe of Nowgong must be held, to be Hindus and where the plff. a Kooh of Nowgong does not allege that he is governed not by the strict rules of Hindu Law but by some other law or custom applicable to the people of his class it must be held, that the ordinary Hindu Law of the Bengal School is applicable to him. (*Banerjee*, J.) DINO NATH MOHUNTO *v.* CHUNDI KOCH. **16 I.C. 349= 16 C.L J. 14.**

———*Applicability — Personal law—Presumption.*

In the absence of proof to the contrary it is presumed that a person is governed by his personal law whenever he goes. A person cannot be governed by more than one personal law providing for different cases. Thus a person cannot have one personal law in case of succession to his maternal ancestor's property and another in case of succession to the estate of his paternal ancestors. (*Mookerjee, and Caspersz*, JJ.) BAHAGABATI KOER *v.* SOHODRA KOER. **13 I C. 691=16 C.W.N. 834.**

———*Applicability—High caste Hindus in the Punjab.*

High caste Hindus living in towns in the Punjab and working as traders are governed by Hindu Law, in the absence of evidence to show custom in derogation of the Hindu Law. (*Martineau and Zafar Ali*, JJ.) MT. BAL KAUR *v.* DEOKI. **4 Lah. 235=1923 Lah. 579.**

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———*Applicability—Converts—Presumption.*

Where the person in a question continued to maintain a close connection with his family and brotherhood at his original place of residence, the presumption is that his family is governed in matters of succession by the same rules as are in force in its original home. Where the family is descended from converts to Mahomedanism from Hinduism the presumption is that they follow Muhammadan Law. The presumption is a rebuttable one. *Broadway and Campbell*, JJ.) NAJM UD DIN *v.* ABDUL HAMID. **1923 Lah. 175.**

———*Applicability—Beri Khatris of Jagroon.*

The Beri Khatris of Jagroon are governed by Hindu Law and not by custom in matters of succession. (*Broadway*, J.) BAL MUKAND *v.* KISHEN DEVI. **1923 Lah. 6.**

———*Applicability of—Custom of succession.*

In matters of succession the Courts must apply the ordinary Hindu Law when a custom to the contrary is not proved. (*Shadi Lal*, C.J. *and Le-Rossignol*, J.) DALIPA *v.* DALLU. **4 Lah. L J. 336.**

———*Applicability — Punjab Brahmins—Custom.*

In a case of disputed succession or alienation on the ground of custom the universal rule is that a Brahmin is presumed to be governed by his personal law and if he alleges a custom contrary to the rules of that law he is bound to prove by cogent and clear evidence that he is governed by such custom. The question of custom is one of fact depending upon the particular circumstances alleged and proved in each case. (*Abdul Raoof and Martineau*, JJ.) HARBANS LAL *v.* ATRA. **53 I.C. 858.**

———*Applicability—Aroras of Punjab.*

Hindu Law is applicable to Aroras. (*Rattigan and Jones*, JJ.) CHANDAN MAL *v.* MUSAMMAT WASINDI BAI. **92 P.R. 1915= 31 I.C. 541=168 P.W.R. 1915.**

———*Applicability of—Migrating family—Personal law.*

In the case of a Hindu who with his family left the ancestral home in Bikaneer and settled down in Delhi, succession to the property "in the absence of any proof that they were governed by some family custom" was governed by the principles of their personal law. (*Rattigan and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. **27 P.W.R. 1915= 27 I.C. 701=57 P.L.R. 1915.**

———*Applicability—Kumhars.*

The strict Hindu Law does not apply to Kumhars. They are governed by custom. (*Kensington*, J.) BALLIA *v.* EMPEROR. **24 P.W.R. 1914. Cr.=25 I.C. 839= 15 Cr. L.J. 639=161 P.L.R. 1914.**

HINDU LAW—Applicability.

——*Applicability—Khatiks — Low caste Hindus.*

Khatiks are low caste Sudras and are governed by Hindu Law. (*Johnstone*, J.) BHOLAR *v.* EMPEROR. **181 P.L.R. 1914= 15 Cr. L.J. 539=24 I.C. 947= 31 P.W.R. Cr. 1914.**

——*Applicability — Sikhs — Conversion from Muhammadanism.*

Sikhs are Hindus governed by Hindu Law modified by custom. Sikhism admits of conversion to its fold from Muhammadanism and no special ceremony is prescribed for the conversion. (*Reid*, C.J. *and Rattigan*, J.) DHALIP KAUR *v.* FATTI. **99 P.R. 1913= 41 P.W.R. 1913=18 I.C. 930= 100 P.L.R. 1913.**

——*Applicability—Thattans of North Malabar—Presumption as to partibility—Illegitimate sons of Thattans—Rights of inheritance.*

The Makkathayam law which the Thattans follow corresponds in the main to the ordinary Hindu Law and *prima facie* involves partibility. (*Schwabe*, J.) VAZHAYILPARKUM *v.* VAZHYILPARKAM. **44 M.L.J. 274=18 L.W. 525= (1923) M.W.N. 173=46 M. 597= 1923 Mad. 452.**

——*Applicability—Evidence—Rules of—Not in force after the Evidence Act.*

When dealing with the question of a rule of evidence the Hindu Law will not apply. (*Krishnan and Venkata Subbarao*, JJ.) PONDUR ADEYYA *v.* JALUDI BURRAYYA. **43 M.L.J. 725=16 L.W. 976= 32 M.L.J. 6=(1923) M.W.N. 49= 1923 Mad. 182.**

——*Applicability*—Ezhuvas *or Iluvas and* Thiyas *in Malabar.*

The presumption that Hindu Law is ordinarily applicable to *Ezhuvas* and *Thiyas* is unwarranted. In the present case it is not proved that the castes are not governed by Hindu Law but by a special custom which confers a special status of inheritance on women and their descendants. (*Oldfield and Hughes*, JJ.) KARUPPATIYAL K. P. RAMAN *v.* RAMULATHA LARUKKAL MUTHU. **40 M.L.J. 301=13 L.W. 218= 62 I.C. 534=(1921) M.W.N. 233.**

——*—Applicability—A Hindu domiciled in Southern India.*

A Hindu domiciled in Southern India is ordinarily governed by Hindu Law as expounded by Southern commentators. (*Sadasive Aiyar and Spencer*, JJ.) THAIKANDHI POKANCHI *v.* ILLIVATUKAL ACCHUTTAN. **39 M.L.J. 427=60 I.C. 209=13 L.W. 101.**

——*Applicability of — Muhamadans — Navayats of South Canara—Family trade.*

When a Muhammadan trading family lived as members of a joint family following Hindu manners and customs purchased properties indiscriminately in the names of the various members, a suit for partition would lie and the shares would be allocated according to the principles of Hindu Law, 42 Cal. 801, (P.C). Foll.; 12 Mad. 380, Ref. Many incidents of the Hindu joint family system obtain by custom among Navayats. (*Wallis*, C.J. *Oldfield and Seshagiri Aiyar*, JJ.) HUSSAIN SAHIB *v.* HASSAN SAHIB. **41 I.C. 184=3 L.W. 835. (On appeal from (1915) M.W.N. 880= 31 I.C. 927=2 L.W. 1140.**

——*—Applicability of Labbais of Coimbatore —Retention of Hindu usages.*

Labbais or Tamil speaking converts to Muhammadanism in the Coimbatore District, adhere to the Hindu Law in matters of succession and partition and have the same restrictions of female succession as the Hindus. 8 Mad. 464; 1 Cal. 186; 27 M.L.J. 156; 15 Mad. 281; 9 M.L.T. 92, Foll. (*Wallis*, C.J. *and Srinivasa Iyengar*, J.) IBRAHIM ROWTHER *v.* MUHAMMAD IBRAHIM ROWTHER. **39 Mad. 664=29 M.L.J. 763= 30 I.C. 806=(1915) M.W.N. 866.**

——*Applicability—Chetties.*

Malabar Chetties are governed by Hindu Law. (*Oldfield and Tyabji*, JJ.) AZIMANILA VEETTIL KANAM PILLAI *v.* KAYINARI GOPALAN NAIR. **26 I.C. 337=(1914) M.W.N. 883.**

——*—Applicability—Degraded women.*

The law applicable to a degraded women is the ordinary Hindu law and that which is by custom applicable to dancing girls. (*Oldfield and Seshagiri Iyer*, JJ.) MEENAKSHI *v.* MUNIANDI PANNIKKAN. **38 Mad. 1144= 1 L.W. 704=(1914) M.W.N. 672= 16 M.L.T. 270=25 I.C. 957= 27 M.L.J. 383.**

——*Applicability—Berar.*

In Berar wherever the *mitakshara* and Mayukha differ, the latter predominates. (*Kotval*, A.J.C.) SHRIRAM *v.* RAJA RAM. **19 N.L.R. 193=1924 Nag. 83.**

——*Applicability—Gonds of Central Provinces—Burden of Proof.*

A Gond is not a Hindu and is not governed by the Hindu Law. In the case of any particular Gond, he can prove he has adopted any particular Custom or all the principles of Hindu Law, but it is for him to prove his allegations. (*Halifax and Kotval*, A.J.C.) VITHOBA *v.* LALSINGH. **19 N.L.R. 104=1923 Nag. 317.**

——*—Applicability — Gujars of Ninar — Central Provinces.*

The Gujars of the Ninar District of the Central Provinces are governed by the Benares school of Hindu Law. (*Batten*, J.C.) RAM BHABAI *v.* TOTA RAM. **6 N.L.J. 39= 1923 Nag. 188.**

——*Applicability—Sub-School of Hindu Law—Jaiswar Sub-division of Kalar caste—Residence—Domicile.*

In view of the decision of the Privy Council in 48 C. 30 (P.C.) a Hindu residing in a particular

HINDU LAW—Applicability.

province of India is *prima facie* subject to the doctrines of Hindu Law recognised in that province. The Jaiswar Sub-division of the Kalar caste residing in the Central Provinces is governed by the Benares School of Hindu Law, having originally migrated from Oudh. In determining a person's domicile, the place where his property is situate is not conclusive. (*Kotwal and Prideaux*, A.J.C.) GOVIND *v.* RADHABAI KALAR. **1923 Nag. 7 (2).**

——*Applicability*—Gonds—*Guardianship of property*—*Mother*—*Brother*.

Gonds are not Hindus and the onus of proving that a Gond family has accepted the Hindu Law and is governed by it rests on the party alleging it. Consequently in the absence of proof of any special custom the question of guardianship among Gonds must be decided according to justice, equity and good conscience. As regards the properties of a minor, Gond, his brother is a preferential guardian to his mother though as regards the person of the minor, the mother is next to the father the natural guardian. (*Hallifax*, A.J.C.) KOLHU *v.* BELSING. **17 N L.R. 183=1922 Nag. 201.**

——*Applicability*—*Damdupat*.

Rule of Damdupat is not applicable to a decree by a puisne mortgagee. (*Kotwal*, A.J.C.) NARAYAN *v.* NATHMAL.
17 N.L.R. 200=1922 Nag. 155.

——*Applicability*—*Berar*.

The *lex loci* of Berar and the Maharashtra is the Mitakshara interpreted by the Mayukha. (*Prideaux*, A.J.C.) GOVINDA *v.* DOOMI.
65 I.C. 671=8 N.L.J. 187.

——*Applicability — Migrating family — Jains*.

A Hindu carries his personal aw with him and the Jains also do the same. The ordinary presumption that a Hindu family migrating from one part of the country to another takes with it its first laws and customs as to succession must be applied in the case of Jains also, unless it can be established that after migration the family have adopted the particular doctrines in its new domicile. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) MUSSAMMAT ZUNKARI *v.* BUDHMAL.
57 I.C. 252.

——*Applicability — Adoption of Hinduism if valid—Onus of proof*.

A man does not becoms a Hindu by calling himself one, nor is the adoption by non-Hindu of usages resembling some parts of the Hindu Law a sufficient ground for applying the whole of that law to him *en bloc*, in the same way and to the same extent as if he were a Hindu. In the case of a family which is not originally Hindu but which had adopted Hinduism the burden of proving that the family is governed in a particular matter by the Hindu Law is upon the person who asserts that it is so governed. (*Stanyon*, A.J.C.) UJIYAR *v.* TILOCHAN-
44 I.C. 435.

HINDU LAW—Applicability.

——*Applicability — Dayanandis — Arya Samaj*.

Dayanandis are Hindus forming a set of the Arya Samajists. They believe in the supremacy of the Vedas. (*Coutts and Adami*, JJ.) MT. SURAJ JOTE KUER *v.* MT. ATTAR KUMARI.
3 P.L.T. 551=(1922) Pat. 285=1922 P. 378.

——*Applicability*—*Community*—*Non-Hindu in origin*—*Subsequent adoption of Hinduism*—*Presumption — Extent of adoption*—Basi Chowrasi Gaddidars—*Marriage*—*Adoption*—*Impartibility*.

In dealing with the custom of an entire community it is of more importance to have regard to the history of the main body than to the history of the less important branches. The *Basi Chowrasi Gaddidars* are a recognised community. Probably the community was non-Hindu in orgin; but the members have all now accepted Hinduism to such a degree as to raise a presumption that the community has assimilated the law of adoption and so far as the Lachmipur *Gaddi* is concerned there is no custom in it to the contrary. It is only in the case of the Tundi, Gudan Jharia and Palganj *gaddis* that the tradition exists that the holders of the Kharagdhiha *gaddis* were orginally Rajputs. The indication therefore, is that as a group these *gaddidars* were originally indigenous and at some time unknown accepted Hinduism. The estates of these *gaddidars* are impartible and descend to the eldest son; but this does not show that they are non-Hindus. The rule against marrying within the same *gotra* is not an universal rule among Hindus but is recognised by the *Basi Chowrasi Gaddidars* inasmuch as they do not marry within certain groups. (*Chapman and Atkinson*, JJ.) SHAHDEO NARAINDAS *v.* RUSUM KUMARI.
46 I.C. 929.

——*Applicability*—*Born Hindus*.

The application of a Hindu Law to a person does not depend upon his being born a Hindu. A Hindu need not be an orthodox Hindu or a member of the four castes. The Hindu Law applies to a Hindu till the abandonment by him of his religion. (*Ormond and Twomey*, JJ.) MAUNG THIT, MAUNG *v.* MA YAIT.
10 Bur L.T. 194=37 I.C. 780.

——*Applicability*—*Sind and Bombay Presidency*—*Rule of succession*.

Where a rule of succession is of general authority in Bombay Presidency it is held to apply also in Sind, unless the person alleging to the contrary sets up an invariable and ancient special usage. (*Fawcett*, J.C *and Kemp* A.J.C. DOWLAT RAM *v.* NARAYAN DAS.
60 I.C. 929=14 S.L.R. 231.

——*Applicability*—*Convert to Muhammadanism*.

In a suit by a Hindu son to the estate of his father, a convert to Muhammadanism, the appellate Court may apply Hindu or Muhammadan law, as the case may be, though it was

HINDU LAW — Applicability — Cutchi Memons.

expressly put under the Hindu Law in the lower Court. (*Fawcett*, J.C. *and Boyed*, A.J.C.) HASSOMAL MURIJMAL *v.* GHULAM MOHAMAD. 27 I.C. 857=8 S.L.R. 156.

Applicability—Cutchi Memons.

See KHOJAS AND CUTCHI MEMONS.

Applicability—Khojas.

See KHOJAS AND CUTCHI MEMONS.

Ascetics.

———*Ascetics—Nihang—Marriage— Marriage illegitimate—Succession.*

An ascetic of the Nihang order, among whom marriage is forbidden, cannot validly contract a marriage and the issue of any such marriage being illegitimate has no claim to the ascetic's property. (*Richards*, C.J. *and Banerji*, J.) SESPURI *v.* DWARKA PRASHAD.
21 I.C. 432=11 A.L.J. 778.
[Affirming on appeal 16 I.C 222.]

———*Ascetics—Nihang Gossains—Marriage—Invalid.*

Among ascetics of Nihang order marriage is not permissible in the absence of a special custom and a son born of marriage is no heir and cannot succeed to the *gadi* and its properties. (*Rafique*, J.) RAM KISHORE *v.* JAGANNATH PURI. 21 I.C. 85=11 A.L.J. 738.

———*Ascetics—Succession— Bairagi, whether are Sanyasis.*

Whether Bairagis can be classed as Sanyasis is doubtful as their order is not confined to twice-born members. (*Scott*, C.J. *and Hayward*, J.) RAMDAS GOPALDAS SADHU *v.* BALDEO DAS KANSHALYADAS. 39 Bom. 168=26 I.C. 607=16 Bom. L.R. 757.

———*Ascetics—Sudra—Yati or Sanyasi.*

According to Smrithis a Sudra cannot be a yati or sanyasi. (*Chatterjee and Newbould*, JJ.) LOCHAN BIMMA *v.* ADHAR CHANDARA MAHONILA. 35 I.C. 630.

———*Ascetics—Sudras.*

Quære:—Whether Bairagees can be classed as Sanyasis, the order of Bhairagees not being confined to members of the twice-born castes. A Sudra cannot enter the order of Sanyasis. (*Holmwood and Chapman*, JJ.) HARISH CHANDRA ROY *v.* ATIR MAHMUD. 40 Cal. 546=18 I.C. 474=17 C.W.N. 517.

———*Ascetics—Sanyasam—Renunciation of the world—Onus.*

In 1883, plff. mortgaged his share in the house and left the village, adopted a life of an itinerant mendicant, attached himself as chela to a guru, never re-visited his village and had not married. *Held*, that under the circumstances the interference was not unwarranted that the plff. had renounced the world and abandoned his property and that the burden of

HINDU LAW—Caste.

proving the contrary was on the plff. and he had failed to discharge it. (*Ratligan*, C.J. *and Shah Din*, J.) LACHMAN GIR *v.* GOPI.
43 I.C. 167=18 P.W.R. 1918.

———*Ascetics—Succession* — Sudra *ascetic dying without relations.*

According to *Yajnavalkya* upon the death of a *sudra* ascetic without relations his secular property descends to his '*sishya*' and does not escheat to Government. The *Mitakshara* recognises the interposition of the preceptor, pupil and the fellow-student, between the relatives of the deceased and the King. (*Ayling and Odgers*, JJ.) SAMBASIVAN PILLAI *v.* SECRETARY OF STATE. 44 Mad. 704=13 L.W. 638=41 M.L.J. 109=63 I.C. 659=(1921) M.W.N. 481.

———*Ascetics—Sanyasin—Characteristics.*

Sanyasin's main feature is relinquishment of all property and abandonment of wordly concerns. On becoming Sanyasin the property vests in his heirs. Praishamantram is absolutely essential to a Sanyasam. Rites and ceremonies necessary for Sanyasin discussed. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) KONDAL ROW *v.* SHAMULAWARU.
40 I.C. 535=33 M.L.J. 63.

Authority.

See HINDU LAW—TEXTS.

Bandhus.

See HINDU LAW—SUCCESSION.

Benami Purchase.

See BENAMI.

Benami Transactions.

See BENAMI.

Betrothal.

See HINDU LAW—MARRIAGE.

Bequest.

See HINDU LAW—WILL.

Caste.

———*Caste—Son of Hindu by Mohomedan concubine.*

A Hindu had a son by his Muhomednn mistress. The son was brought up by the father as an orthodox Hindu, married Khshatriya ladies according to the Hindu ritual, wore the Hindu caste mark, and worshipped the Hindu idols. *Quære.*—Whether the son becomes a Hindu and whether issue of his marriage with the Khshatriya ladies is illegitimate according to Hindu Law. (*Lord Atkinson*) SHER BAHADUR *v.* GANGA BAKHSH SINGH. 38 All. 101=41 I.A. 1=18 C.W.N. 401=15 M.L.T. 169=(1914) M.W.N. 184=12 A.L.J. 188=26 M.L.J. 291=19 C.L.J. 277=1 O.L.J. 109=17 O.C. 68=22 I.C. 293=16 Bom. L.R. 306 (P.C.)

HINDU LAW—Caste.

——*Caste—Bharbunjas and Kurmis.*

Bharbunjas do not occupy a higher social status than Kurmis. (*Piggott*, J.) SOHAN LAL *v.* MT. DURGA. **21 I.C. 691.**

——*Caste—Lewa Kunbis—Sudras.*

The Lewa Kunbis residing at Changdev in the East Khandesh District are Sudras. (*Macleod*, C.J. *and Shah*, J.) MANCHHARAM BHIKU *v.* DATTU. **54 I.C. 110 = 21 Bom. L.R. 1172.**

——*Caste—Bhatias—Twice born.*

Bhatias rank as twice born but below Aroras and Banias. (*Robertson and Shah Din*, JJ.) AYA RAM *v.* THARI BAI. **34 P.W.R. 1913 = 74 P.L.R. 1913 = 19 I.C. 87 = 78 P.R. 1913.**

——*Caste*—Kshatriya — *Illegitimate offspring—Sudrae.*

The offspring of an illicit connection of a man and a woman of *kshatriya* caste is not a Sudra. (*Evans*, J.C. *and Lindsay*, A.J.C.) SITLA BAKSH SINGH *v.* GAJARAJ SINGH. **12 I.C. 767 = 14 C.C. 227.**

——*Caste—Regulations, value thereof.*

Caste regulations, prevailing amongst Hindus, do not form part of Hinduism and a breach thereof does not make a Hindu a non-Hindu in the eye of law. (*Ormond and Twomey*, JJ.) MAUNG CHIT MAUNG *v.* MA YAIT. **37 I.C. 780 = 10 Bur. L.T. 194.**

Charitable Institution.

See HINDU LAW.— RELIGIOUS ENDOWMENT.

Conversion.

See also (1) HINDU LAW—(*a*) APPLICABILITY. (*b*) SUCCESSION.
(2) FREEDOM OF RELIGIOUS ACT.

——*Conversion—Hulai memons of Porebunder.*

There are among the Mahomedans certain groups whose ancestors were Hindus and professed the Hindu religion, and then were converted to Islam. Among these groups may be reckoned, as it is shown by decided cases, Khojas, Suni Borahs, Molesalam Girasias, Cutch Memons, Nassapooria Memons; and lastly, Halai Memons. Halai Memons domiciled in Porebunder follow the Hindu Law with regard to the successions of females. (*Lord Dunedin.*) KHATUBAI *v.* MAHOMED HAJI ABU. **27 C.W.N. 774 = 41 M.L.J. 35 = 47 B. 146 = 32 M.L.T. 45 = 17 L.W. 208 = 37 C.L.J. 131 = L.R. 4 A. (P.C.) 42 = 25 Bom. L.R. 127 = 1922 P.C. 414 (P.C.).**

——*Conversion—Christianity—Succession.*

Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate, is governed by the Succession Act.

HINDU LAW—Conversion.

Since the passing of the Act, a person ceasing to be a Hindu cannot elect to continue to be governed by the Hindu Law, in matters of succession. (*Lord Shaw*). KAMAWATI *v.* DIGBIJAI SINGH. **43 All. 525 = 18 L.W. 1 = 64 I.C. 559 = 48 I.A. 381 (P.C.).**

——*Conversion—Effect of.*

Where a Hindu father living jointly with son becomes a convert to Mahomadanism, he does not lose his right to joint family property. The son does not become the sole owner. (*Mr. Ameer Ali*) KHUNNI LAL *v.* GOVIND KRISHNA NARAIN. **33 All. 356 = 38 I.A. 87 = 15 C.W.N. 545 = 8 A.L.J. 552 = 13 C.L.J. 575 = 13 Bom. L.R. 427 = 10 M.L.T. 28 = (1911) 1 M.W.N. 432 = 10 I.C. 477 = 21 M.L.J. 645 (P.C.) [Reversing 29 All. 487 = 4 A.L.J. 365 = 27 A.W.N. 151].**

——*Conversion—Minority and Guardianship—Minor.*

Though an undivorced mother of a Hindu infant becomes a Christian she can still be appointed the guardian of the infants if she be in a position to satisfy the Court that she will be able to carry out the obligation of bringing up her children in the faith of her husband. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMAKAR *v.* MISS. BAILEAN. **34 I.C. 632 = 20 C.W.N. 608.**

——*Conversion—Effect.*

Conversion does not entail forfeiture of rights or property or right or interest in ancestral property but effects a severence as between himself and the other co-parceners. (*Mookerjee and Beachcroft*, JJ.) KULADA PRASAD PANDEY *v.* HARIPADA CHATTOPADHYAYA. **40 Cal. 407 = 16 C.L.J. 311 = 17 I.C. 257 = 17 C.W.N. 102.**

——*Conversion—Marriage—Effect of.*

Under the Hindu Law the conversion of the wife to another religion does not dissolve the marriage tie. (*Abdul Raoof*, J.) MUSSAMMAT NANDI *v.* EMPEROR. **69 I.C. 33 = 1 Lah. 440.**

——*Conversion—Apostacy—Effect.*

Conversion of a Hindu to Muhammadanism separates him from the co-parcenary. (*Shadi Lal and Jones*, JJ.) GANGA SINGH *v.* BEGAM. **57 P.R. 1916 = 169 P.W.R. 1916 = 35 I.C. 549 = 4 P.L.R. 1917.**

——*Conversion — Muhammadanism — Sikhs.*

Sikhs are a section of Hindus. Any Muhammadan could be converted to Sikhism. Drinking of sanctified water with *patashas* is sufficient for conversion. The laws of the Sikhs are more those of Hindus, modified by custom. (*Reid*, C.J. *and Rattigan*, J.) DHALIPKUR *v.* FATTI. **99 P.R. 1913 = 41 P.W.R. 1913 = 18 I.C. 930 = 100 P.L.R. 1913.**

HINDU LAW—Conversion.

———*—Conversion—Legitimacy—Sikh Jat—Abduction of a sweeper—Change of religion and marriage—Issue — Legitimacy of—Presumption.*

Where a Sikh Jat abducted a sweeper whose husband was living and married her after conversion to Mahomedanism and had children by her. *Held*, that the children were their legitimate children and that a strong presumption can be drawn that the husband of the sweeper had divorced her. (*Robertson and Shah Din*, JJ.) SHERU *v.* JAWAHIR SINGH. **58 P.R. 1912=13 I.C. 662=240 P.W.R. 1912.**

———*Conversion—Converts to Mahomedanism—Labbais of Coimbatore.*

Labbais or Tamil speaking converts to Mahomedanism in the Coimbatore District adhere to the Hindu Law in matters of succession and partition and have the same restrictions on female succession as the Hindus. 8 Mad. 464 ; 1 Cal. 186 ; 27 M.L.J. 156 ; 15 Mad. 281 ; 9 M.L.T. 62, Foll. (*Wallis*, C. J. *and Srinivasa Iyengar*, J.) SHEIK IBRAHIM ROWTHER *v.* MUHAMAD IBRAHIM ROWTHER. **39 Mad. 664=29 M.L.J. 763=30 I C. 806=(1915) M.W.N. 866.**

———*—Conversion — Effect on marriage—Hindu woman converted to Mahomedanism—Marriage with Moslem—Hindu husband alive—Offspring of second marriage, if legitimate.*

If a Hindu woman becomes a convert to Muhammadanism and marries a Muhammadan during the lifetime of the Hindu husband, the offspring of the second marriage is illegitimate. (*Sadasiva Iyer and Spencer*, JJ.) BUDHUASA ROWTHER *v.* FATIMA BI. **15 M L.T. 107=26 M.L J. 260=22 I.C. 697=(1914) M.W.N. 278.**

———*Conversion—Effect.*

The conversion of some members of the joint Hindu family destroys the joint Hindu family and though the co-parceners may be joint owners the incident of survivorship will no longer subsist. (*Abdur Rahim and Sundara Aiyar*, JJ.) KUNHICHEKKAN *v.* LYDIA ARUCANDAN. **11 M.L.T. 232=14 I.C. 480=(1912) M.W.N. 386.**

———*Conversion—Marriage — Apostacy — Effect of.*

Apostacy does not dissolve the marriage tie under the Hindu Law. (*Lindsay*, J. C.) ABDUL KARIM *v.* ABDUL RAZIK. **28 I.C. 201=2 O L J. 101.**

———**—Co-parcener—Alienation.**

See HINDU LAW—(1) ALIENATION.
(2) JOINT FAMILY.

Custom.

See also CUSTOM (GENERAL).

HINDU LAW—Custom.

———*Custom—Partition—Custom of Patnibhaga—Moopu Succession.*

Among the particular class of Nattukottai Chetties living in the seven villages in the Madura District there exists a valid custom under which in the case of marriage of a second wife during the life of the first, the first wife is entitled to have some property set aside for her maintenance which would descend to her son if she had one and is then called *Moopu* and the property of the husband is notionally divided—one moiety to the sons of the 1st wife and the other to the sons of the 2nd as per division *Patnibhaga*. (*Lord Phillimore*). PALANIAPPA CHETTY *v.* ALAGAM CHETTY. **44 Mad. 740=48 I.A. 539=14 L.W. 609=(1921) M.W.N. 687=1922 P.C. 228 (P.C.).**

———*Custom—Proof—Adoption of daughter's son among Agarwala Vaishyas.*

In support of the alleged custom the defendant examined some 33 witnesses. Thirty of these spoke of the general custom permitting the adoption of a daughter's son prevailing among the Agarwala Vaishyas and they were able to cite at least 31 witnesses out of which 20 instances were accepted as being instances where adoption either of a daughter's son or a sister's son had taken place. Out of these 20 instances 11 were instances of the adoption of a daughter's son. *Held*, the custom set up by the defendant was satisfactorily established. (*Lindsay and Sulaiman*, JJ.) MT. BALLO *v.* RAMKISHAN. **21 A.L J. 478=1924 All. 49.**

———*—Custom in contravention of general—Hindu Law—Quantum of proof.*

A custom in derogation of the general Hindu Law is a matter which has to be proved with more thoroughness and with greater precision than a case which merely affects the parties on record and does not adversely affect parties who themselves are not present in Court, but are nevertheless interested by virtue of belonging to the same community. (*Mears*, C.J. *and Piggott*, J.) MT. DHOLA KUAR *v.* MATHURA SINGH. **1923 All. 341.**

———*Custom—Validity of.*

In a case under Hindu Law or custom English notions of liberty and liberty of contract should not be taken into consideration. (*Chandavarkar and Hayward*, JJ.) GHELABAI GAURISHANKAR *v.* HARGOWAN RAMJI. **36 Bom. 94=12 I C. 928=13 Bom. L.R. 1171.**

———*—Custom—Applicability of—High caste Hindus.*

It would be dangerous to seek to extend custom by such logical processes as analogy. The initial presumption in the case of high caste Hindus is in favour of such Hindus following their personal law, and the onus of proving any special or general agricultural

custom lies on the person asserting the existence of such custom. (*Broadway*, J.) PARS RAM *v.* HUKMAN SINGH. **73 I C. 239.**

———*Custom — Dancing girls — Inheritance—Males and females inherit equally.*

There is a custom in the caste of dancing girls by which sons and daughters share the inheritance equally, contrary to ordinary Hindu Law. Thurston's Castes and Tribes of Southern India, Vol. II, page 127, Ref. (*Schwabe*, C.J. *and Coleridge*, J.) BERA CHANDRAMMA *v.* CHANDRAM NAGANNA.
45 M.L.J. 228=(1923) M.W.N. 567=18 L.W. 309=1924 Mad. 94.

———*Custom—Validity—Partition.*

One of the tests to be applied for ascertaining the existence of a valid custom is to see whether the right claimed was ever contested and whether the person who, but for such custom, would under the general law, be entitled to certain property, abandoned the contest and suffered themselves to be excluded, thus accepting it consciously as having the force of law. 16 All. 221 ; 8 Mad. 464, Foll.; 2 M. H. C.R., 47 Ref. Where there is no proof that people living in a particular area voluntarily adopted a method of division of property which is contrary to Hindu Law applicable to their caste, it is unreasonable to recognise the existence of such a custom and impose it upon all the persons of the caste resident in the area, whether or not they have entered into special agreements. (*Sankaran Nair and Spencer*, JJ.) ALAGU CHETTY *v* PALANIAPPA CHETTY.
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———*Custom—Partition—Athangudi Chetties.*

There is no custom among the Athangudi Chetties by which division was to be effected *per Stirpes* according to the number of wives having sons. (*Sankaran Nair and Spencer*, JJ) ALAGU CHETTY *v.* PALANIYAPPA CHETTY.
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Though the function of the Court is not to create law but merely to interpret the statute, customary, and common laws and they could not be deprived of the power of moving slowly with the better sense of the community which is changing its custom. Caste and religious questions cannot be considered in a too rationable manner and if a custom is not too irrational or immoral and has been prevailing for a long time Courts should give effect to it. (*Miller and Sadasiva Aiyar*, JJ.) MARIAPPA NADAN *v.* VAITHIALINGA MUDALIAR. **18 I.C. 979=(1913) M.W.N. 247.**

———*Custom—Prostitution.*

Per Sadasiva Aiyar, J.—Prostitution is as repugnant to Hindu religion as to any other. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) GUDDALI REDDI *v.* GANAPATHI GANDANNA.
23 M.L.J. 493=12 M L T. 467=17 I.C. 422=(1912) M.W.N. 1136.

———*Custom—Applicability of.*

A custom at variance with the Hindu Law must be strictly applied and cannot be made the basis of any other variation from the law. (*Stanyon*, A.J.C.) SITARAM *v.* LACHMAN.
17 I.C. 133=8 N.L.R. 128.

———*Custom—Essentials.*

A custom must be ancient, continuous, definite, and reasonable. (*Stuart*, A.J.C.) MUSAMMAT PUNNI *v.* CHET RAM.
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———*Custom—Bairagis—Succession, rules of.*

Among Bairagis, succession to any property acquired by a member, subsequent to his admission into the association, is regulated either by special rules as to succession or by the custom prevailing in the association. (*Fawcett and Raymond*, J.Cs.) RAM DAS *v.* AJUDHIA DAS. **63 I.C. 685=14 S.L.R. 137.**

Damdupat.

See DAMDUPAT.

Dancing Girl.

See HINDU LAW—SUCCESSION.

Daughter.

See HINDU LAW—LIMITED OWNER.

Daughter's Estate.

See HINDU LAW—DAUGHTER.

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Debts—Antecedent Debts.

———*Debts—Antecedent debts—Meaning of—Invalid mortgage not a good consideration for later sale.*

Antecedent debt is a debt not only antecedent to the alienation in time but also incurred wholly apart from the ownership or security supposed to be available by such joint estate.

HINDU LAW—Debts—Antecedent debts.

Invalid mortgage is not a good consideration for later sale. (*Lord Shaw.*) CHET RAM *v.* RAM SINGH. **44 All. 368 = 43 M.L.J. 98 = 27 C.W.N. 150 = 24 Bom. L.R. 1231 = 4 U.P.L.R. (P.C.) 64 = 16 L.W. 89 = (1922) M.W.N. 455 = 31 M.L.T. 50 (P.C.) = 49 I.A. 228 = 3 Pat L.T. 363 = L.R. 3 P.C. 141 = 3 P.L.R. 1922 = 1922 P.C. 247.**

——— *—Debts—Antecedent debts—Mortgage at a time when there was no son in the joint family.*

Where a person mortgaged his property before the birth of a son and subsequently after the birth of such son he again mortgaged it in order to discharge the previous mortgage *held* that the prior mortgage constituted an antecedent debt 39. A. 437 ; 44 A. 382 referred to. (*Daniels*, J.) TIRLOK SAITHWAR *v.* LALSA SAITHWAR. **1923 A. 488 (2).**

——— *-Debts—Antecedent debts—Money required for satisfying decree for pre-emption—If one.*

A pre-emption decree merely gives an option of acquiring certain property at a certain price. The decree-holder is under no obligation to acquire the property unless he chooses: money required for such a purpose is not an antecedent debt. *Per Walsh*, J.—There must be a real dissociation in fact to give effect to the doctrine of antecedency. (*Piggott and Walsh*, JJ.) CHATUR BHUJ *v.* GOBIND RAM. **4 U.P.L.R. (A) 43 = 1923 All. 218.**

———*—Debts—Antecedent debts.*

The doctrine of antecedent debt, resting as it does on the theory of pious obligation, is only intended for the protection of third parties who may have acquired rights in good faith in the family property, and if a vendee cannot invoke it for validating a sale effected in lieu of an invalid antecedent mortgage in his own favour, it is still less open to a creditor, whose mortgage has been declared to be invalid to recover the debt, represented by that mortgage, while the mortgagor is alive, from the shares of his sons, who have been exempted from liability out of the very property, the mortgage of which has been declared to be unenforceable. The debt for the payment of which this liability is sought to be enforced is in no sense an antecedent debt. It is the very debt for the repayment of which the mortgage was made ; and if the doctrine of pious obligation cannot be invoked to support the mortgage, it can hardly be invoked during the father's lifetime to enforce the liability of the family property other than the interest of the debtor for its repayment. (*Stuart and Kanhaiya Lal*, JJ.) KISHAN SINGH *v.* CHEJJU SINGH. **45 A. 90 = 1923 All. 206.**

———*—Debts—Antecedent debts.*

Prior mortgage debts forming consideration of the mortgage in suit are not antecedent debts so as to bind the sons, but an oral debt incurred by a co-parcener of the grandfather which was binding on the grandfather binds the grandson as an antecedent debt. (*Piggott and Sulaiman*, JJ.) RAM RATAN MISIR *v.* KAPIL DEO SINGH. **1923 All. 20.**

HINDU LAW—Debts—Antecedent debts.

——— *—Debts—Antecedent debts—Mortgage—Necessity.*

Where the evidence shows that a mortgage executed by a Hindu father was in order to discharge certain prior mortgages and the prior mortgages had themselves been incurred for legal necessity, then the mortgage can be enforced against the whole family property including the interest of the son. The prohibition in *Sahu Ramachandra v. Bhup Singh*. 39 A. 437 (P.C.) does not apply to such a case. (*Rafique and Piggott*, JJ.) RANJIT SINGH *v.* GANGA SAHAI. **L.R. 3 A. 328 = 1922 All. 291.**

———*—Debts—Antecedent debts—Prior mortgage—Discharge of—Son not born at the time—Rights of.*

A prior mortgage executed by a Hindu father is an "antecedent debt" to discharge which he could alienate the family property. If the son was not born at the date of the prior mortgage he could not question the necessity for the same, when seeking to set aside the alienation. 39 A. 437 (P.C.) = 33 A. 283 Ref. (*Piggott and Walsh*, JJ.) SURAJ PRASAD *v.* MAKHAN LAL. **20 A.L.J. 236 = 1922 All. 51.**

———*—Debts—Antecedent debts—Pro-note in contemplation of subsequent mortgage—Personal covenant by father in mortgage.*

Neither a debt contracted by a Hindu father on a promissory note which recited that the money was to form part of a mortgage of family property to be executed later on, nor money borrowed by him on a mortgage of family property containing a covenant for personal liability, can be deemed an antecedent debt inasmuch as the money was not borrowed wholly apart from the security of family property, and irrespective of the credit which the borrower obtained by reason of the ownership of family assets. (*Mears*, C.J. *and Banerji*, J.) RAM SARUP *v* BHARAT SINGH. **64 I.C. 763 = 19 A.L.J. 744.**

——— *—Debts—Antecedent debts—After born son.*

A deed executed by a Hindu father, long before the birth of a son, is valid and a deed executed in lieu of that deed must be considered to be for an antecedent debt. (*Tudball and Rafique*, JJ.) GIRDHARI LAL *v* GOBINDRAM. **68 I.C. 25 = 19 A.L.J. 456.**

———*—Debts—Antecedent debts—Father—Pious obligation—Grandson's liability.*

An obligation incurred by the father of a Mitakshara joint family which would be binding upon his sons must have been incurred antecedently to the transaction in suit, and secondly, it must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available

HINDU LAW—Custom.

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——*—Debts—Antecedent debts—Father—Pious obligation—Grandson's liability.*

An obligation incurred by the father of a Mitakshara joint family which would be binding upon his sons must have been incurred antecedently to the transaction in suit, and secondly, it must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available

by such joint estate. If a Hindu father borrows money on the security of the joint estate and there is nothing to show that the money was advanced to him on personal credit, the debt is not an antecedent debt binding on the sons. The doctrine of pious obligation comes into operation only against the sons, or in case of their death, against the grandsons. The doctrine is based on spiritual considerations apart from the ownership of the property. *Held*, (1) that a prior mortgage by the father did not constitute an antecedent debt within the decision in 39 All. 437. (P.C.); and (2) that there was no pious obligation on the grandsons in the lifetime of their respective fathers to pay off the debts of their grandfather. (*Rafique and Lindsay*, JJ.) RAM SINGH *v.* CHETRAM.
41 All. 529=17 A.L J. 706=51 I.C. 119=1 U.P.L.R. (H C.) 52.

——*Debts—Antecedent debts—What are.*

"Antecedent debts" means obligations incurred irrespective of the ownership of the estate and apart from the security afforded by it (*i. e.*) personal debts of the father for his own purposes. 39 All. 437 (P.C.), Rel. (*Tudball and Raflque*, JJ.) BRIJ NARAIN RAI *v.* MANGAL PRASAD. **41 All. 235=17 A.L J. 249=50 I.C. 101=1 U.P.L.R. (H.C.) 49.**

——*Debts—Antecedent debts — Brothers—Previous obligation.*

In a joint family an antecedent debt incurred by a brother who is the Manager of the family is not binding on other brothers unless it be for legal necessity. There is no pious duty imposed on brothers and nephews to pay off debts of brothers and uncles. (*Tudball*, J.) NIRBAHAY LAL *v.* KALLAN. **46 I.C. 546.**

——*Debts—Antecedent debts—Immoral—Liability of son.*

Antecedent debts tainted with immorality would not make the son liable in respect of a mortgage executed for the discharge of such debts. A mortgage executed in lieu of a money decree obtained against the father in respect of sums not accounted for by him, is enforceable as an antecedent debt binding on the sons and grandsons of the mortgagor. (*Banerji and Piggott*, JJ.) NIDDHA LAL *v.* COLLECTOR OF BULANDHSHAR.
35 I.C. 209=14 A.L.J. 610.

——*Debts—Antecedent debts— Mortgage—Son's liability.*

Money paid at the time of the registration of a mortgage executed by a Hindu father is not an antecedent debt for which the son's shares will be liable. (*Richards*, C.J. *and Piggott*, J.) KUNNUMAL *v.* TARA CHAND. **29 I.C. 152.**

——*Debts — Antecedent debts—Son's liability.*

A mortgage by father to secure purchase-money of property which he had successfully bid for at an auction sale is an antecedent debt and as such the sons were bound to pay it. (*Ryves and Piggott*, JJ.) KAFILDEO *v.* THAKUR PRASAD. **36 All. 17=21 I.C. 868=11 A.L.J. 961.**

——*Debts—Antecedent debts—What are—Alienation in respect of—Propriety of.*

The object of the alienation by way of mortgagee having been to pay off the antecedent debts incurred by the father prior to the mortgage, the whole debt was antecedent under Hindu Law, though the original debt was due to the mortgagee himself. There is nothing in the judgment in I.L.R. 39 All. 437 (P.C.), which supports the contention that the antecedent debt must not be due to the alienee. If the money is borrowed on the security of a mortgage to pay off the antecedent debts it would be an alienation in respect of the antecedent debts. (*Shah and Hayward*, JJ.) PANDURANG *v.* BHAGWANDAS.
44 Bom. 341=55 I.C. 544=22 Bom. L.R. 120.

——*Debts—Antecedent debts.*

The security bond executed by a father under the Mitakshara law for the purpose of obtaining a stay of the execution of a money decree passed against him creates a charge on the family property to discharge an antecedent debt not tainted with immorality and is enforceable against his successors. (*Richardson and Huda*, JJ.) MUKTI PRAKASH NANDE *v.* ISWARI DEI DEBI. **57 I.C. 858=24 C.W.N. 938.**

——*Debts—Antecedent debts contracted on the security of family property.*

A Hindu father has power to alienate the joint family property for an antecedent debt where such antecedent debt has been contracted on the security of the family property. This rule is not affected in any way whatever by the observation of the Privy Council in 39 All. 437. 42 Mad. 711, F.B., *Foll.* (*Moti Sagar*, J.) DALJIT SINGH *v.* HARI CHAND
1923 Lah. 669.

——*Debts—Antecedent debts.*

An antecedent debt is one which was incurred only prior to the security sought to be enforced but must be quite independent of it. (*Abdul Raoof and Harrison*, JJ.) LEIK SHAH *v.* DINA NATH. **63 I.C. 515.**

——*Debts—Antecedent debts—Promissory note—Deposit of title deeds—Personal covenant—Liability of ancestral property for debts of father.*

Where moneys are advanced to a Hindu father and a pro-note is taken for the amounts advanced and subsequently the title-deeds of properties are deposited as collateral security, in a suit by the creditor to enforce the debt, *held*, that the promissory note debt remained a simple money debt, though subsequently secured by a deposit of title-deeds, and that being dissociated in fact from the mortgage, it constituted an antecedent debt for which the

HINDU LAW—Debts—Antecedent debts.

whele of the family properties were liable including the shares of the sons. Per *Spencer*, J:—The personal covenant contained in an earlier mortgage and subsisting at the time of a later mortgage cannot constitute an "antecedent debt" in a legal sense. A personal covenant given by a father at the time of entering into a mortgage does not constitute an antecedent debt. 39 A. 437; 44 A. 368, Rel.; 60 I.C. 177, diss. Per *Devadoss*, J.:—A personal covenant in a prior mortgage can be an antecedent debt in respect of a subsequent mortgage of the same properties. 39 A. 437 ; 44 A, 368; 21 C.W.N. 957, Rel. (*Spencer and Devadoss*, JJ.) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR. **(1923) M.W.N. 57 (2)= 16 L.W. 936=1923 Mad. 262.**

———*Debts—Antecedents debts—Prior mortgage debt.*

An independent debt, not immoral or illegal, contracted by a Hindu father, on the security of the joint estate antecedent to the mortgage debt sued on, can be treated as an antecedent debt so as to support the charge on the son's shares also to the extent of the sums secured on the prior mortgage. The well settled rule of law in the Madras Presidency that a Hindu father has power to alienate the joint family properties for an antecedent debt where such antecedent debt has been contracted on the security of the family property is not affected by the decision in 39 All. 437 (P. C.). 35 M. L.J. 382, Overruled. (*Wallis*, C.J., *Oldfield*, *Sadasiva Aiyar*, *Coutts-Trotter and Seshagiri Aiyar*, JJ.) ARUMUGAN CHETTY *v.* MUTHU KOUNDAN. **42 Mad. 711=37 M.L.J. 166= 9 L.W. 565=(1919) M.W.N. 409= 52 I.C. 525=26 M.L.T. 96 (F.B.)**

———*Debts—Antecedent debts—Prior mortgage.*

An alienation by the father of a Hindu joint family is binding on the sons under two circumstances (1) where the alienation is for purposes of family necessity, (2) where it is for discharging an antecedent debt incurred by the father. The expression 'antecedent debts' applies only to debts incurred antecedently on the father's sole responsibility and wholly apart from the ownership of joint testator the security afforded or supposed to be available by such joint estate. A prior mortgage which has not been proved to have been created to discharge a debt antecedent to it cannot be treated as an antecedent debt for the purpose of binding the sons' interest in co-parcenary property in a subsequent mortgage. (*Spencer and Krishnan*, JJ.) BADAGALA JOGI NAIDU *v.* BENDALUM PAPIAH NAIDU. **48 I.C. 289= 35 M.L.J. 382.**

[This is no longer law in Madras See 52 I.C. 525=42 Mad. 711 (F.B.)]

———*Debts — Antecedent debts — Future liability.*

Debts to arise in future through failure of consideration are not antecedent debts due at time of sale for the purpose of validating the sale. (*Sadasiva Iyer and Spencer*, JJ.) SUBBAIYA MUDALIAR *v.* THULASI MUDADALIAR. **14 M.L.T. 557=1 L.W. 65= 22 I.C. 44=(1914) M.W.N. 16.**

HINDU LAW—Debts—Antecedent debts,

———*Debts—Antecedent debts—Mortgage incurred previously.*

It is settled law that a mortgage executed by a father is not an antecedent debt since it is not incurred by the father independently of the security of the joint family property. 39 A. 437, Foll. (*Prideaux*, A.J.C.) PURNIA *v.* SONIA. **1923 Nag. 23.**

———*Debts — Antecedent debts — Mortgage debt if can be so regarded—Son's liability.*

Under the Hindu Law a mortgage debt contracted by the father on the security of the family properties is not an antecedent debt for which the son would be liable. 39 A. 437 ; 41 A. 235 ; 41 A. 529 ; 5 P.L.J. 120 ; 15 N.L.R. 88 ; 16 N.L.R. 64, Rel. (*Prideaux*, A.J.C.) BALOO *v.* GODAWARI BAI. **5 N L J. 238= 1922 Nag. 136.**

———*Debts—Antecedent debts—Liability for —After-born sons.*

Where a mortgage of family property executed by a Hindu father before the birth of any son is renewed by another mortgage after the birth of a son, the latter mortgage is binding as an antecedent debt on the son's share of the family property. (*Batten and Kotwal*, A.J.Cs.) SHEO NARAIN *v.* NATHU. **5 N L J. 114= 1922 Nag. 1.**

———*Debts — Antecedent debts— What is— Test.*

To make a debt, which is in fact antecedent in point of time, not antecedent in the sense of the ruling in *Sahu Ram's* case. 39 A. 437 (P.C.), it must be found that there was an understanding between the creditor and the debtor at the time of the loan that it will be secured later by a mortgage of the joint estate. The true test is whether the payment of the advance and the transfer securing its payment are a single transaction. 9 N.L.R. 74 ; 14 N.L.R. 41, Ref. (*Kotwal and Prideaux*, A.J.C.) PANDURANG *v.* KESHORAO. **64 I.C. 718.**

———*Debts—Antecedent debts — Alienation by father—Son's liability.*

Even during the father's lifetime an alienation for his antecedent debts binds the shares of his sons in the co-parcenary property. Alienation includes a mortgage as well as a sale. 39 All. 437, Appl. (*Mitra and Prideaux*, A.J.Cs.) RATANCHAND *v.* SHEO CHARAN. **51 I.C. 28=15 N.L R. 88.**

———*Debts—Antecedent debts—Mortgage.*

A prior mortgage over joint family property created by a Hindu father cannot be treated as an antecedent debt for the purpose of binding the sons' interest in the co-parcenary property by an alienation. (*Mitra*, A.J.C.) DILESHRAM BRAHMAN *v.* NOHAR SINGH. **48 I.C. 193.**

HINDU LAW—Debts—Antecedent debts.

———*Debts—Antecedent debts—Enforceable against the son during father's lifetime — Immoral or illegal purposes—Onus.*

The pious obligation of a Mitakshara son to pay his father's debts is not during his father's lifetime, a ground for giving effect as against the son, to a mortgage of ancestral joint family property executed by the father to secure a debt which is neither antecedent nor justified by legal necessity. A loan made to the father on the occasion of such a mortgage is not an "antecedent" debt and if the loan is not justified by the legal necessity the mortgage is to that extent inoperative as against the son's share. 39 All. 437, P.C. and 9 N.L.R. 74, Ref. If in a suit to enforce such a mortgage the son is impleaded as a party he can show that any antecedent debt forming part of the consideration is tainted with immorality ; but it is not incumbent on him to go further and prove that when the debt was contracted, the creditor was aware or might have been aware of the immoral purpose for which the money was taken. 28 All. 508, Foll. (*Drake Brockman*, J.C.) DILLI SINGH *v.* BINA. **44 I.C. 506 = 14 N.L.R. 41.**

———*Debts—Antecedent debts—Test of.*

The true test seems to be whether the payment and the transfer are in reality a single transaction or not. Religious duty of son to pay off debt must be distinguished from liability of son to respect an alienation by the father. (*Drake-Brockman*, J.C.) HIRA RAU *v.* UDHI RAU. **19 I.C. 861 = 9 N.L.R. 74.**

———*Debts—Antecedent debts—Mortgage.*

The definition of an antecedent debt as one "incurred irrespective of the credit obtainable from joint family property" is to be regarded as one to be construed in the light of the particular facts before a Court and as not excluding from the category of antecedent debt money borrowed on a hypothecation bond since the personal liability of debts so secured continues to exist independently of the hypothecation. A usufructuary mortgagor is not as such personally liable to pay the loan. It is open to the alienee to invoke the antecedency of the father's debts to support an alienation as against the son even during the father's life-time. 39 A. 437 ; 23 O.C. 211, Ref. (*Ashworth*, J.C.) JAMNA PRASAD *v.* BALBHADDAR. **25 O C. 388 = 9 O.L J. 601 = 1923 Oudh 147.**

———*Debts—Antecedent debts—Alienation by father—Pro-notes.*

Where a mortgage was taken by the creditor in lieu of pro-notes executed by the father. *Held*, the effect of the novation of the contract was practically to render the earlier bonds unenforceable. The consideration of the mortgage is therefore a good consideration binding on the sons who were charged under the Hindu Law with the responsibility of paying the debts due by their father who died during the pendency of the suit on the mortgage. (*Kanhaiya Lal*, J.C.) RAM SINGH *v.* MT. RAGHUBANSA. **26 O.C. 201 = 9 O. & A.L.R. 29 = 1923 Oudh 3.**

HINDU LAW—Debts—Antecedent debts.

———*Debts — Antecedent debts— Personal liability under mortgage—Alienation by father.*

To justify an alienation of joint family property by a father on the ground of antecedent debt, there must be not only antecedency in time but also true dissociation in fact. In the absence of proof of such a debt, the sons are not precluded from impeaching the alienation. The personal liability of a Hindu father executing a usufructuary mortgage, in case of dispossession of the mortgagee, does not constitute debt which can be treated as antecedent, 39 A.437 ; 31 A. 176 ; 21 O.C. 200 ; 23 O.C. 204, Ref. (*Daniels*, J.C.) MUSSAMMAT MANZURAN BIBI *v.* JANKI PRASAD. **9 O.L.J. 35 = 1922 Oudh 50.**

———*Debts—Antecedent debts — Essentials.*

An antecedent debt must not only be prior in time but must be quite separate from the mortgage in question. If a person borrows money on a mortgage, a little more than a fortnight after a prior mortgage, there is no separation so as to render the latter an antecedent debt. (*Daniels*, A.J.C.) UMRAO SINGH *v.* GAYA PRASAD. **60 I.C. 647 = 23 O.C. 374.**

———*Debts—Antecedent debts—Pious obligation of the sons—Divided sons—Liability of.*

Where an earlier bond carried a personal liability to repay the amount borrowed and the amount secured by a subsequent deed was credited towards the payment of earlier deed, *held*, since the entire amount of the earlier deed was borrowed to repay money debts not secured by joint family property was an antecedent debt. The question of antecedent debts becomes material only when legal necessity cannot be established. The pious obligation of a son or a grandson to pay off his ancestral debts does not depend on whether the two were joint or separate in estate because the doctrine is found on religious considerations to which the question of separation is entirely irrelevant. Where the debt is one which the father himself was under a pious obligation to pay, a subsequent debt incurred to pay that debt is an antecedent debt binding on his sons in turn. (*Daniels and Wazir Hassan*, A.J.Cs.) RAM SARAN *v.* MANGAL SINGH. **60 I.C. 219 = 28 O.C. 327.**

———*Debts—Antecedent debts — Mortgage debt in absence of personal obligation.*

A mortgage debt is not as such an antecedent debt unless coupled with a personal obligation to pay the debt. (*Daniels and Wazir Hasain*, A.J.Cs.) RAM DEI *v.* SURAJ BAKSHA. **23 O C. 204 = 7 O.L J. 509 = 60 I.C. 117 = 2 U.P.L.R. (J.C.) 166.**

———*Debts — Antecedent debts—Arrangements to pay off decree—Legal necessity.*

A Hindu saved his family estate by a mortgage from an execution sale topay off the

HINDU LAW—Debts—Antecedent debts.

amount of a decree. *Held*, the arrangement was for the benefit of the family and amounted to antecedent debt. A son would be under a pious obligation to satisfy the mortgage. (*Kanhaiya Lal*, A.J.C.) HARIHAR DAT *v.* MATHURA PRASAD. **7 O.L.J. 467 = 57 I.C. 599 = 2 U.P.L.R. (J.C.) 143.**

———*Debts—Antecedent debts—What are.*

Joint family property may be sold or charged by father to discharge an antecedent debt; *i.e.*, a debt incurred not only prior to the date of the sale or charge but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be afforded by it. After joint family property is thus sold or mortgaged, no question as to whether the antecedent debt was incurred for legal necessity or other purposes binding upon the sons or whether the transaction entered into by the father is enforceable against the sons during his lifetime arises, 39 All. 437, (P.C.) Ref. (*Lindsay*, J.C.) PUDAI RAM *v.* BAIJNATH LAL. **23 O.C. 264 = 56 I.C. 745 = 7 O.L.J. 273.**

———*Debts—Antecedent debts—What are.*

A debt which is not entirely disconnected with the subsequent debt, is not an antecedent debt merely becaue it is only precedent to such subsequent debt. (*Ashworth*, A.J.C.) RAM NARAIN *v.* LALTA PRASAD. **53 I.C. 664 = 6 O.L.J. 504.**

———*Debts—Antecedent debts—Mortgage—Liability of sons.*

A debt could not be regarded antecedent so as to bind the sons as such, unless it had been incurred irrespective of the credit obtainable from the joint family property. As it had not been shown that the debts, for the payment of which the money was borrowed by the father had been so incurred, the sons of the mortgagor were not liable to pay the mortgage debt. (*Lyle and Ashworth*, A.J.Cs.) CHANDIKA BAKHSH SINGH *v.* WIDOW OF JAGAN SINGH. **52 I.C. 449 = 6 O.L.J. 331.**

———*Debts—Antecedent debts—Test of—Prior and subsequent creditors need not be different—Mortgage debt.*

To constitute an antecedent debt binding on the sons, the prior and the subsequent creditor may not necessarily be different persons nor the father dead at the time the subsequent creditor claims his debt incurred by the father to satisfy the prior debt. But such debt must not have been secured by a mortgage of the joint family property and that the prior and the subsequent debts should not be contemporaneous in fact. 39 All. 437; 21 O.C. 200, Rel. (*Lyle and Ashworth*, A.J.Cs.). MUHAMMAD BAQAR ALI KHAN *v.* HAZARI. **52 I.C. 108 = 6 O.L.J. 297.**

———*Debts—Antecedent debts—Mortgage.*

Where there is a personal debt enforceable apart from the prior mortgage, it is an antecedent debt as to support an alienation to discharge the mortgage. (*Daniels, and Lyle*, A.J.Cs.) GURU SAHAI *v.* GIRDHARI LAL. **22 O.C. 84 = 1 U.P.L.R. (J.C.) 54 = 52 I.C. 75 = 6 O.L.J. 411.**

———*Debts—Antecedent debts—Mortgage.*

A mortgage of family property to pay an antecedent mortgage is not justified unless the antecedent mortgage itself is justified. A prior mortgage debt cannot be an antecedent debt for it was not incurred apart from the security of the property. 39 All. 437, (P.C.) Ref. (*Kanhaiya Lal*, A.J.C.) KESHO DUTT *v.* RAM SUNDAR. **22 O.C. 26 = 6 O.L.J. 244 = 50 I.C. 880 = 1 U.P.L.R. (J.C.) 86.**

———*Debts—Antecedent debts—Alienation by father.*

Alienation by father for so called antecedent debts is not valid if the transferee was the original creditor and could not prove necessity for the prior debts. (*Kanhaiya Lal*, A.J.C.) HARPAL SINGH *v.* HARALAH BAHADUR SINGH. **22 O.C. 16 = 50 I.C. 795 = 1 U.P.L.R. (J.C.) 32.**

———*Debts—Antecedent debts—Mortgage—Personal covenant in simple mortgage—Son's liability.*

The personal obligation to repay, compromised in a simple mortgage may amount to an antecedent debt which the sons may be bound to discharge if the debt was not incurred for illegal or immoral purposes. 39 All. 437, Foll. (*Kanhaiya Lal and Daniels*, A.J.Cs.) RAMAN LAL *v.* RAM GOPAL. **21 O.C. 200 = 47 I.C. 987 = 5 O.L.J. 629.**

———*Debts—Antecedent debts—Barred debt.*

Barred debts are not "antecedent debts." 19 Bom. L.R. 69, Ref. A surety debt is binding on the sons. (*Stuart*, J.C.) DEO NARAYAN SINGH *v.* LAL HARI HAR SAREIN SINGH. **38 I.C. 821 = 20 O.C. 1.**

———*Debts—Antecedent debts—Meaning.*

Money taken by a Hindu father at the time of the alienation of the ancestral property or as part and parcel of the transaction is not an antecedent debt. 29 Mad. 200; 21 All. 176; 14 O.C. 299, Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKTAWAR SINGH *v.* RAM SINGH. **36 I.C. 44 = 3 O.L.J. 289.**

———*Debts—Antecedent-debts—Question of—When arises.*

The defence of antecedent debt arises only when the sons are impeaching the alienation made by their father and does not arise when one brother is challenging the alienation of another brother. (*Lindsay*, A.J.C.) BINDA PRASAD *v.* GAYA PRASAD SINGH. **13 I.C. 547.**

———*Debts—Antecedent debts—Mortgage debts.*

The doctrine of antecedency applies where the debt is one incurred in substance and reality antecedently to the mortgage whether or not the debt so incurred was secured by a

HINDU LAW—Debts—Antecedent debts.

charge on the family property. Where the debt is one incurred by the heads of all the branches of a joint Hindu family the whole family property can be made liable including the interests of all the sons and grandsons. 6 Pat. L J. 526 ; 42 M. 713 foll. (*Miller*, C.J. *and Bucknill*, J.) HARI PRASAD SINGH *v.* SOURENDRA MOHAN SINHA. **3 P.L.T. 709 = 1922 P. 450.**

——*Debts — Antecedent debts — Doctrine where applies.*

Per Bucknill, J.—The doctrine of antecedent debts applies only when the relationship of father and son exists. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN. **63 I.C. 625.**

——*Debts—Antecedent debts—Mortgage by father.*

Per *Curiem* (*Dawson Miller*, C.J. *diss.*)—A prior mortgage by father may also be an antecedent debt, so as to be a valid consideration for a subsequent sale or mortgage, if it is not only prior in time but also independent of and unconnected with the subsequent mortgage or sale and if the debt was not contracted for immoral or illegal purposes. (*Miller*, C.J., *Jwala Prasad Das*, *Adami and Bucknill*, JJ.) MATHURA MISRA *v.* RAJKUMAR MISRA. **2 P.L.T. 407 = 62 I.C 132 = 1921 Pat. 245 (F.B.)**

——*Debts—Antecedent debts—Secured and unsecured.*

Per *Jwala Prasad*, J.—No distinction such as secured and unsecured antecedent debts can be made. If a real antecedent mortgage independent of and unconnected with a subsequent mortgage is proved, there is no reason why the family property cannot be validly mortgaged subsequently for such a debt just as in the case of a personal debt. (*Jwala Prasad and Ross*, JJ.) MICHU MISSIR *v.* BABHADRA PRASTI. **62 I.C. 116 = 2 P.L.T. 147.**

——*Debts—Antecedent debt—What is.*

To constitute an antecedent debt, the debt must have firstly been to discharge an obligation antecedently incurred, and, secondly, the obligation antecedently incurred must have been incurred wholly apart from the ownership of the joint estate. (*Miller*, C.J. *and Mullick*, J.) BANKHANDI RAI *v.* KISHORIMONDAL. **2 P.L.T. 17 = 6 P.L.J. 72 = 61 I.C. 102 = 1921 Pat. 113.**

——*Debts—Antecedent debts—What are—Son's liability.*

A Mitakshara father as the manager of the joint family has got the power to alienate the joint family properties for family necessity or payment of antecedent debts. This is an exception to the general rule that no co-parcener of the Mitakshara joint family, without the consent of the other co-parceners, can sell or mortgage such properties. An antecedent debt is neither a debt which is prior in time to the father's security but not quite independent of it, nor a debt prior in time to the suit in which it was sought to be enforced, but a debt which is not only prior in time but incurred completely apart from the security which is sought to be enforced, (*Coutts and Sultan Ahmad*, JJ.) SUKDEO JHA *v.* JHAPAT KAMAT, **5 P.L.J. 120 = 1920 Pat. 67 = 1 P.L.T. 49 = 54 I.C. 946 = 2 U.P.L.R P. 39.**

HINDU LAW—Debts—Co-parcener.

——*Debts—Co-parceners—Liability of.*

A debt incurred by the manager of the family for purchase of a house, which is purchased with the consent of all the adult co-parceners, is binding on the family. (*Richardson and Banerjee*, JJ.) PITAMBAR LAL *v.* SITAL. **25 I.C 263 = 12 A.L.J. 641.**

——*Debts—Co-parcener — Liability of—Joint family.*

When a debt is contracted by one member of an admittedly joint Hindu family the creditor must show that the debt was raised for joint family purposes ; the presumption would be the other way. 45 P.R. 1899 ; 59 P.R. 1893 ; 34 Bom. 72, Ref. ; 34 All. 135, Not Foll. (*Johnstone*, C.J.) BRIJ LAL *v.* JAISHI RAM. **172 P.L.R. 1915 = 30 I.C. 500 = 106 P.W.R 1915.**

——*Debts — Co-parcener — Debt by one member—When binding on others.*

A debt by a member of a family (though not the manager) which is incurred on behalf of the family is binding on all the members. The borrowing member will be deemed to be the agent of the manager. It is a case of a combined application of the Hindu Law and the law of agency and involves no unjustifiable extension of either. (*Oldfield and Ramesam*, JJ.) OHILISETTI VENKATAKRISHNAIAH *v.* ATAYAM SUBBIAH. **14 L.W. 520 = 41 M.L.J. 551 = 68 I.C. 462 = (1921) M.W.N. 830.**

——*Debts—Co-parcener—Decree against—Liability of property.*

If a money decree is passed against a member of a joint Hindu family, the family property is liable to the extent of the share of that member, provided that interest was attached in execution of the decree during the lifetime of the judgment-debtor. (*Batten*, A.J.C.) JAGRITDAS *v.* BHAGISAO. **28 I.C. 362 = 11 N.L.R. 45.**

——*Debts—Co-parcener—Liability of.*

Members who have ratified and adopted debt so as to warrant their being treated as contractory parties are personally liable. 22 Mad. 166, Rel. (*Atkinson* J.) SITARAM SONAR *v.* RAJ KUMAR NONIA. **38 I.C. 691.**

——*Debts—Co-parceners—Liability of.*

The onus is on creditor to make enquiries as to necessity for the loan and to show that he made such enquiries if he wants to make all

HINDU LAW—Debts—Discharge.

the members of the joint family liable for a debt. (*Chapman and Atkinson*, JJ.) MANDIL DAS *v.* MEGH NARAIN. **1 P.L.J. 39 = 34 I C. 742 = 3 P.L.W. 46.**

Debts—Discharge.

——*Debts—Discharge*,

Where debts due to family are sometimes paid to the father and sometimes to the son, payment to son is good discharge. (*Shah Din*, J.) JAHANGIR *v.* GANDA SHAH. **69 P L R. 1911 = 10 I.C. 838 = 230 P.W.R. 1911.**

Debts—Father.

——*Debts—Father—Mortgage — Mortgage by father not proved immoral—Decree against father and sons—Form of.*

The mortgage being one executed by a *Mitakshara* father, and the sons having failed to show that the loan was taken for immoral purposes; and the mortgagee having failed to prove legal necessity, a decree was passed to the effect, *viz.*, mortgage-decree against the share of the father, and if the sale of that share was insufficient to satisfy the decretal amount balance to be realised by sale of the son's shares and interest six months' time being allowed for redemption. (*Chaudhuri and Newbould*, JJ.) BABU KRISHNA PRASAD *v.* BABU RAMPERSHAD SINGH. **33 I.C. 990 = 20 C.W.N. 508.**

——*Debts — Father — Insolvency— Sons' share vests in Official Assignee—Remedy of sons.*

Where a father in a joint Hindu family, becomes an insolvent, his son's share vests in in Official Assignee. The son if he desires to challenge such vesting, he must file a suit against the Official Assignee and must show that the father's debts were acquired for immoral purposes. (*A. Raoof*, J.) BIHARI *v.* SATNARAIN. **3 Lah. 329 = 1923 Lah. 1.**

——*Debts—Father—Accounts—Son's liability—Grandson.*

The sons and grandsons are liable for the debts contracted by a father of a joint Hindu family who had a running account on the basis of which a balance was struck. (*Abdur Raoof*, J.) HAYMARAM *v.* CHATTA RAM. **2 Lah. L.J. 831.**

——*Debts—Father — Revival of barred debts.*

The manager of a Hindu family has no power to bind the co-parceners by reviving a barred debt but his sons will be liable as it is neither immoral nor illegal. (*Lindsay and Kanhaiyalal*, A.J.Cs.) HARIHAR BAKSH SINGH *v.* BHARAT PRASAD. **20 I.C. 590 = 16 O.C. 185.**

Debts—Immoral or Illegal.

——*Debts—Immoral or illegal—Proof of.*

A general charge of immorality is not sufficient to prove that the debts were contracted by a father for immoral purposes. (*Lord Macnaghten*). SRI NARAIN *v* RAGHUBANA RAI. **17 C.W.N. 124 = 25 M.L.J 27 = 17 I.C. 729 = (1913) M.W.N. 768 (P.C.).**

HINDU LAW—Debts—Immoral or illegal.

——*Debts—Immoral or illegal.*

General evidence of immoral character or misconduct is insufficient to prove that the debts in question were tainted with immorality. (*Mears*, C.J. *and Banerjee*, J.) RAMSARUP *v.* BHARAT SINGH. **43 All. 703 = 64 I.C. 763 = 19 A.L.J. 744.**

——*Debts—Immoral or illegal—Antecedent debt—Liability of sons and grandsons to pay off.*

The sons and grandsons of a Hindu are liable on a mortgage executed by him to pay off a simple money decree passed against him for not having accounted for some money belonging to a person whose agent he was as the consideration was an antecedent debt; but if such an antecedent debt relates to a transaction tainted with immorality its existence would not entitle the subsequent mortgage to be enforced against the joint family property. (*Banerjee and Piggott*, JJ.) NIDDHA LAL *v.* COLLECTOR OF BULANDSHAHR. **35 I.C. 209 = 14 A.L.J. 610.**

——*Debts—Immoral or illegal—Indemnity—Son's pious obligation.*

Ancestral property in the hands of a Hindu son is liable for money due under an indemnity clause in a sale-deed, executed by his father. (*Richards and Banerjee*, JJ.) RAGUNANDAN PRASAD *v.* CHEM RAM. **27 I.C. 895.**

——*Debts—Immoral or illegal—Libel—Liability of son.*

Debt incurred for the purpose of filing an appeal in a libel case is binding on the son. (*Richards and Griffin*, JJ.) SUMAR SINGH *v.* CHAUBE LIDAHAR. **33 All. 472 = 9 I.C. 624 = 8 A.L.J. 306.**

——*Debts—Immoral or illegal—Debt due to breach of trust.*

A debt which a father has to pay owing to a breach of duty as a trustee cannot be regarded under Hindu Law as tainted with immorality; and his sons are liable to pay the same. 37 Mad. 458; 39 Cal. 862; 32 Bom. 348, Rel. on. The liability of the sons under Hindu Law to pay their father's debt, not tainted with illegality or immorality, is not affected by the fact that the father is alive at the time. The onus of proving that criminality attached to the debt is on the sons. (*Scott*, C.J. *and Shah*, J.) HANMANT *v.* GANESH. **43 Bom. 612 = 51 I.C. 612 = 21 Bom. L.R. 435.**

——*Debts—Immoral or illegal—Contravention of Government rules.*

Debts of father for carrying on private trade contrary to Government servants' conduct rules is not illegal or immoral and so the sons are liable in respect of such debt. 32 Bom. 348, Dist. (*Scott*, C.J. *and Shah*, J.) RAMAKRISHNA TRIMBAKNADKARNI *v.* NARAIN SHIVRAO ARAS **40 Bom. 126 = 31 I.C. 301 = 17 Bom. L.R. 955.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof.*

A mortgage executed by a Hindu father binds the son's interest in the property unless the particular loan was incurred for immoral purposes. Simple proof that the father was addicted to immorality and extravagance is not enough. A decree for a personal debt of the father, not illegal or immoral, may be enforced by sale in execution in his lifetime of the entire family estate, including son's interest. 12 Mad. 142, Foll. (*Scott*, C.J. *and Batchelor*, J.) DATTATRAYA VISHNU *v.* VISHNU NARAIN. **36 Bom. 68=12 I.C. 949= 13 Bom. L.R. 1161.**

———*Debts — Immoral or illegal—Son's liability to pay father's debt—Criminal misappropriation.*

Property was bought by H. & T. at a revenue sale but the sale having been reversed, T withdrew the amount of the purchase-money. In a suis by H, to recover his share of the purchase-money a decree was passed against T in execution of which ancestral property belonging to T was sold. *Held*, that the debt was not immoral and the son was bound to repay it, and that, therefore he was not entitled to recover his share of the ancestral property. (*Chapman and Mullick*. JJ.) HARI SINGH *v* SANT PRASAD SINGH. **32 I.C. 969.**

———*Debts—Immoral or illegal—Proof—Son's liability.*

Under the Mitakshara, the onus of proving the illegal and immoral nature of the debt contracted by the father lies upon the son setting it up and is not discharged by proof of general immorality or extravagant life. The connection between the particular debt and the immorality must be proved. (*Mookerjee and Beachcroft*, JJ.) HAZARMALL *v.* ABANI NATH. **17 C L J. 38=18 I.C 623= 17 C.W.N. 280**

———*Debts—Immoral or illegal—Omission to render accounts—Liability of son.*

Failure to account for money may create a civil liability; but it does not necessarily amount to a criminal act. Where a *Mitakshara* father failed to account for the money of his principal in his hands. *Held*, that his sons were bound to pay this debt. 39 Cal. 862, Rel. (*Mookerjee and Beachcroft*, JJ.) KRISHNA CHARAN MAHANTI *v.* RADHA KANTA ROY. **16 I.C. 410.**

———*Debts—Immoral or illegal—Evidence of—Son's liability.*

A father's debts will be binding on the sons unless incurred for illegal or immoral purposes. General evidence of extravagance and immorality on the part of the father is not sufficient. 13 Cal. 21, Relon. (*Chitty and Teunon*, JJ.) SHIBESHUR PRASAD BHARAT *v.* BRIJ MOHAN MISIRI. **14 I.C. 183.**

———*Debts—Immoral or illegal—Surety—Liability of son.*

HINDU LAW—Debts—Immoral or illegal.

A son is liable for the debts incurred by father as surety even where no money has been advanced. (*Coxe and Imam*, JJ.) RASIK LAL MANDAL *v.* SINGESHWAR ROY. **39 Cal. 853=16 C L.J. 107= 14 I.C. 147=16 C W.N. 1103.**

———*Debts—Immoral or illegal—Decree of Court—Father's powers.*

No substantial difference in principle can by made between an obligation to repay moned actually borrowed, and an obligation created by a judgment of Court. The liability imposer by the Court upon a *Mitakshara* Hindu fatheto indemnify a person for damages to his proe perty creates a debt which may be justly recovered from the ancestral property in the hands of his son. Meaning and scope of "*Auyavaharika* debts" discussed. (*Mookerjee and Carnduff*, JJ.) CHAKORI MAHTON *v.* GANGA PRASAD. **39 Cal. 862= 16 C.W.N. 819=12 I.C. 609=15 C.L.J. 228.**

———*Debts—Immoral or illegal—Failure by father to render accounts—Son's liability.*

Where defendant's father as manager of plaintiff's estate during his minority and while it was under Court of Wards failed to account. *Held*, liability imposed by the Court upon the father to indemnify the person with whose property he had improperly interfered creates a debt for which the ancestral property in the hands of the son might justly be held liable. Admittedly the father was not criminally prosecuted and the suit was one for accounts which he had failed to deliver. Every breach of civil liability does not necessarily involve a mortal turpitude, and it has not been shown that the debt in question was criminal in law for the discharge of which the son is not liable. (*Abdul Raoof and Moti Sagar*, JJ.) GUR SARAN DAS *v.* MOHAN LAL. **4 Lah. 93= 1928 Lah. 399.**

———*Debts—Immoral or illegal—Proof—Creditor party to waste.*

Where it is alleged by the son that a particular debt was contracted for such purpose, the burden lies on him to prove his allegation. The burden is not shifted by showing that the father lived an extravagant or immoral life; a direct connection between the debt and the father's immorality, must be shown but where the creditor is fully aware of the waste by the father, the son is not liable for the debt. (*Shah Din and Le-Rossignol*, JJ.) JASWANTI *v.* TEJ NARAIN. **120 P.W.R. 1917= 41 I.C. 192=10 P.R. 1918.**

———*Debts—Immoral or illegal—Onus.*

Where from one known source all necessary and legal debts of a person are defrayed all other loans are presumably expended on immorality. This presumption arises only when the debtors had no debts or business on which the loans *might* have been expended with propriety. 50 P.R. 1913, Ref. (*Chevis and Le Ressignol*, JJ.) INDAR NARAIN *v.* NANAK CHAND. **74 P.W.R. 1916= 32 I.C. 454=58 P.R. 1917.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof of—Son's liability.*

An illegal or immoral debt of the father is not binding on the son. Where the father was all along living an immoral life it will not be reasonable to call on the son to prove that this or that item of debt was incurred for this or that particular piece of immorality. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA. LTD , LAHORE.

110 P.W.R. 1914=215 P.L.R. 1914= 25 I.C. 480=3 P.R. 1915.

———*Debts—Immoral or illegal—Proof of—Joint family.*

A debt contracted by a Hindu father for an immoral purpose is not binding on the son, even though the property is acquired by the father himself. Isolated acts of immorality or even general immorality are not enough to prove that a debt for immoral purpose was incurred, but there must be a clear connection between the immoral life and the debts contracted. It is sufficient to prove that the borrower was at the time living a licentious life, beyond his means, and that he was without any business or occupation on which the money might legitimately be spent. (*Robertson and Beadon*. JJ.) RAM NATH *v.* BULAIRA.

50 P.R. 1913=69 P.L.R. 1913= 17 I.C. 735=15 P.W.R. 1913

———*Debts—Immoral or illegal - Onus.*

To avoid liability for a debt of his father the son has to establish a direct connection between the debt and the alleged illegal or immoral purpose. The onus cast by law on the son is not discharged by evidence showing that the father was keeping a concubine and to that extent must have incurred additional expense. Direct evidence of the application of a debt for a specific immoral purpose is not always possible to obtain and it will be sufficient if the evidence is such that the Court could infer that the debt must have been incurred for immoral purpose. 15 Cal. 717; 14 Bom. 320; 36 Bom. 68. Foll. (*Abdur Rahim and Moore*, JJ.) MUTHUSAWMI GOUNDAN *v* ARUMUGA GOUNDAN. **59 I.C. 390=12 L.W. 159.**

———*Debts—Immoral or illegal — Proof of.*

When a Hindu son seeks to escape liability for the debts contracted by his father on the ground that they were contracted for immorality, he ought to show by reasonable proof that there is a connection between the debts and the immoral purpose. The immoral character of the debts is not proved by showing that the father was leading an immoral life, that the income of the family was sufficient for the family needs and that there was no trade or business necessitating the borrowing of loans. 17 I C. 735, not Foll. (*Sadasiva Aiyar and Spencer*, JJ.) DHULLIPALGA BUTCHAYYA *v.* KUPPA VENKATAKRISHNAYA.

58 I.C. 797=36 M.L.J. 296

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Surety.*

A Hindu son is bound to pay his father's debt contracted by him as surety if not for an illegal or immoral purpose and the claim can be enforced against him even during the lifetime of his father. (*Abdur Rahim and Ayling*, JJ.) SUBRAHMANYA AIYAR *v.* SHAH WALLLACE & CO. **38 M.L.J. 402=12 L.W. 117= 58 I.C. 648=28 M.L.T. 107.**

———*Debts—Immoral or illegal—Omission to account for moneys.*

Under the Hindu Law a person is liable to account for amounts collected by his father and grandfather in their capacity as trustees but subsequently misappropriated by them. The fact that the misappropriation would amount to a criminal offence does not affect his liability. Meaning of "*Avyavaharika*" debts in the Hindu Law discussed. (*Wallis*, C. J. *and Seshagiri Ayyar*, J.) GARUDA SANYASAYYA *v.* NEERELLA MUTHAMMA.

36 M.L.J. 661=9 L.W. 1=48 I.C. 740= 26 M.L.T. 86.

———*Debts — Immoral or illegal—Suretyship to pay on default—Different kinds of suretyship.*

A Hindu father entered into a suretyship obligation in the following words; "I shall make the said V pay the amount due under the said promissory note within two months from this date. In default of payment as aforesaid by the said person within said time, I shall pay the amount of principal and interest on the said promissory note and get back the said promissory note and the surety bond and the title-deeds." *Held*, that the promise amounted to a suretyship for payment and his sons are bound under the Hindu Law to pay the debt created thereby. There are three kinds of suretyship according to the Mitakshara for appearance for assurance and for payment. Distinction between the various kind of suretyship discussed. (*Wallis*, C.J. *and Spencer*, J.) THANGATHAMMA *v.* ARUNACHELLA CHETTIAR. **41 Mad. 1071=35 M.L.J. 229= 48 I.C. 76=(1918) M.W.N. 673.**

———*Debts—Immoral or illegal—Proof of.*

Evidence to show that the father led an immoral life is not sufficient to exclude the father's right to sell his joint property. There must be evidence to show that the particular debts in question was contracted for an immoral purpose. (*Spencer and Krishnan*, JJ) SUBBA RAO *v.* SWAMIA PILLAI. **47 I.C 834= 7 L.W. 407.**

———*Debts — Immoral or illegal—Mesne profits—Son's liability.*

Where in a suit against a Hindu father and his sons, mesne profits are decreed against the father only, the son's interest also could be proceeded against, since it was not a debt for which the sons are not liable. (5 Cal. 148 (P.C), Ref. to; 28 All. 288, Foll.) (*Ayling and Napier*, JJ.) ZANAMANDRA PAPIAH *v.* LANKA SUBBASASTRULU. **(1914) M.W.N. 616=25 I.C. 396= 27 M.L.J. 276.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Surety—Decree against father—Partition between father and son—Liability of son.*

A son is liable for the surety debt of his father only if they remained joint; but if there was a partition made even after the date of decree against the father, the son's property is not liable for such debt. 24 Mad. 555; 8 I.C. 131; 4 M.L.T. 277, Foll; 11 Bom. 37; 4 I.A. 247; 5 Cal. 148; 3 Cal. 21; 28 Bom. 383, Dist. (*Wallis*, C.J. *and Oldfield*, J.) DEVAGUPTAPU KAMESHWARAMMA *v.* VADADI VENKATASUBBA RAO **33 Mad. 1120=27 M L J 112=24 I.C. 474=(1914) M.W.N. 742.**

———*Debts — Immoral or illegal— Fine—Enquiry by creditor as to neceessity.*

When a creditor suing the sons for debt of the father made enquiries and ascertained that the debt was required to pay off a fine imposed on the father, but did not proceed further to ascertain that the fine was paid when the father was convicted of a criminal offence the enquiry is not sufficient and the creditor is not protected. (*Miller and Oldfield*, JJ.) SAVUMIAN *v.* NARAYANAN CHETTIAR. **23 I.C. 218=15 M.L.T. 372.**

———*Debts—Immoral or illegal—Breach of trust.*

The liability of contribution arising out of a decree of Court directing re-imbursement of trust funds expended by the father along with other trustees, extended to the sons. (*Benson and Sundara Iyer*, JJ.) VENUGOPAL NAIDU v. RAMANANDHAN CHETTY. **37 Mad. 458=11 M.L.T. 427=14 I.C. 705=23 M.L.J. 61.**

———*Debts—Immoral or Illegal.*

The term "illegal" or "immoral" is used as a translation of the word Avyavaharika. A summary of the eight kinds of debts coming within that category which are specified in the texts is given in the judgment of Mukerjee, J. 39 C. 862 and it includes "promises without consideration" (*Hallifax*, A.J.C.) ARJUN *v.* CHHAGAN LAL. **6 N.L.J. 185=1923 Nag. 300.**

———*Debts—Immoral or illegal—Onus of proof.*

In cases of allegation that a particular debt was contracted for immoral purposes the onus of proving the immoral purpose is on the son and not on the creditor. Proof of immoral habits does not shift the onus on to the creditor. 31 All. 176, Dist.; 30 All. 156, Ref.; 14 Bom. 320, Foll. (*Mittra*, A.J.C.) BHIKA *v.* HARLAL. **45 I C. 206.**

———*Debts—Immoral or illegal—Liability of son.*

The sons are not bound for money due under a contract of indemnity unless the transaction comes with term "*Vyavaharika*" lawful, usual or customary. (*Stuart*, J.C.) DEO NARAYAN SINGH *v.* LAL HARI HAR SARAN SINGH. **38 I.C. 821=20 O.C. 1.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof.*

To show that a particular debt was immoral, the sons must show their father's immorality as regards that particular debt and not only his general bad character. (*Stuart and Kanhaiya Lal*, A.J. Cs.) BAKHTAWAR SINGH *v.* RAM SINGH. **36 I.C. 44=3 O.L.J. 289.**

———*Debts—Immoral or illegal—Liability of son—Determination of.*

The liability of son for debts of a father alleged to be immoral or illegal should be determined before the decree is passed and not in execution. (*Lindsay and Kanhaiya Lal*, A.J.Cs.) MAHADEO PERSHAD *v.* GAJRAJ SINGH. **34 I.C. 397=3 O.L.J. 164.**

———*Debts—Immoral or illegal—Proof.*

General allegations of immorality on the part of a father is not sufficient to exempt the sons from their liability to discharge the father's debts unless they prove that the particular debts in question were contracted for immoral purposes. (*Lindsay* J.C. *and Kanhaiya Lal*, A.J.C.) NARENDRA BAHADUR *v.* ABDUL HAQ. **30 I.C. 216=2 O.L.J. 237.**

———*Debts—Illegal or immoral—Liability of son.*

Money borrowed for wrestling is not for illegal or immoral purposes. (*Tudhall and Evans*, A.J. Cs.) JAI RAM *v.* SHEO SHANKER BARSH. **9 I.C. 406.**

———*Debts—Immoral or illegal—Burden of proof.*

Where a son impeaches an alienation by his father on the ground that the debts were incurred for immoral or illegal purposes, it is not necessary to prove that each item was expended for an immoral purpose. When a person is shown to be leading a licentious life and living beyond his means, the fact that there is no business proved on which the loans could have been expended raises a presumption that they must have been expended for licentious purposes. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PARKASH. **69 I.C. 602.**

———*Debt—Illegal or immoral—Payment to a near relation.*

A debt by a Hindu father to pay to a near relation to repay certain trust money misappropriated by him, is neither immoral nor illegal. (*Dass and Ross*, JJ.) BENARES BANK *v.* JAGDIP NARAYAN. **6 P.L.J. 198=62 I.C. 465=2 P.L.T. 468.**

———*Debts—Immoral or illegal—Surety—Sons's liability—Liability of grandsons.*

A Hindu son or grandson governed by Mitakshara is liable for the debt of his father or grandfather contracted on a contract of a suretyship for the payment of money and which is *vyavaharika*, i. e., lawful, useful or customary unless the transaction is illegal or immoral. (*Coutts and Adami*, JJ.) BALAKRISHNA SAHAI *v.* SHAM SUNDAR SAHAY. **56 I C. 962.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Decree—Liability of joint family property—Necessity.*

A debt created by decree against a Hindu father of a joint family in respect of money not accounted for by him is not an illegal or an immoral debt, especially when there is a finding that there was legal necessity for incurring the debt so created, and it may be recovered from the ancestral property belonging to the joint family. 39 Cal. 862 ; 3 Pat. L.J. 533. (*Mullick and Atkinson*, JJ.) GANESH RAI *v.* DEO SARAN AHIR. **4 P L J. 692 = 52 I.C. 271 = 1920 Pat. 100.**

———*Debts—Immoral or illegal—Surety—Surety against embezzlement.*

It is unlawful for the father of a joint family governed by the Mitakshara to stand surety against embezzlement and a debt incurred by him in so standing surety is illegal for which son's shares in family property are not liable. 44 Cal. 524; 15 C.L.J. 228, Rel. (*Chapman and Roe*, JJ.) SATYA CHARAN CHANDRA *v.* SATPIR MAHANTY. **51 I.C. 791 = 4 P.L J. 309**

———*Debts—Immoral or illegal—Sums not accounted for by father.*

Mitakshara sons are bound by a sale of their property held in execution of a decree against their father even where it is not shown that the debt was not for legal necessity, unless they succeed in proving that the debt was an immoral debt. But every civil debt does not necessarily involve a moral stigma. 39 All 437 ; 44 Cal. 524 (P.C.); 31 All. 176, Rel. Moneys collected by a father as an agent and not properly accounted for are not immoral or illegal debts. 39 Cal. 862, Foll. and Ref. (*Mullik and Atkinson*, JJ.) MOHANTHA GADAHAR RAMUNAJ DAS *v.* GHANA SHYAM DAL. **47 I.C. 212 = 3 P.L.J. 533.**

———*Debts—Immoral or illegal — Surety debt—Pious obligation*—Vyavarika.

It is not necessary that the father should have actually received money in order to create a debt which it would be the pious duty of the son to pay. A contractual liability to pay money is a debt enforcible against the son provided it is neither illegal nor immoral and comes within in the meaning of the term "*Vyavarika*" which means lawful, usual or customary. A Hindu is liable for the surety debt of his father or grandfather where the suretyship is for the payment of money. The suretyship contemplated by the Hindu Law is of the same kind as the Contract Act. (*Mullick and Thornhill*, JJ.) MATABIR PRASAD *v.* SRI NARAYAN. **4 P. L.W. 437 = 3 P. L.J. 396 = 46 I.C. 27 = 1918 Pat. 328.**

——*Debts—Immoral or illegal — Expense of criminal case—Pious obligation of son.*

Under Mitakshara a son is under a pious obligation to pay the debt incurred by his father in defending himself against a criminal charge especially where the offence charged was not one involving any moral turpitude. It is not however his duty to repay the money borrowed by the father for paying the fines of his co-accused. (*Chapman*, J.) CHUMAN CHAUDHURY *v.* RAM SUNDER CHAUDHURY. **39 I.C. 861.**

HINDU LAW—Debts—Liability.

——*Debts—Immoral or illegal—Damages—Breach of contract.*

Decree creates a debt indicating the liability of the son and the Court must look to the purpose for which the debt was incurred and not to the circumstances of the original liability. Debt of father arising out of a decree for damages for breach of contract to sell property held by him as trustee will be binding on son. (*Crouch and Hayward*, A.J.Cs.) SAMANMAL GANGUMAL *v.* MAGHANMAL VERSIMAL. **19 I.C. 378 = 6 S.L R. 150.**

———*Debts—Immoral or illegal—Suretyship—Liability of minors.*

A Surety bond executed by members of the joint Hindu family for purposes not immoral, bind their heirs, especially when it is for family benefit (*i.e.*,) the sureties having got an appointment for their brother as cashier, (*Mr. Bosanquet*). GANGA SAHAI *v.* BOMBAY-BARODA, AND CENTRAL INDIA RY. **50 I.C. 243.**

Debts—Liability.

——*Debts—Liability for—Father's debt.*

By the Mitakshara Law according to 44 Cal. 524, a judgment against the father of the family cannot be executed against the whole of the Mitakshara property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against "the father alone". These words could not be clearer and they are absolutely comprehensive. There are no limitations, qualifications or reservations to the effect that the debt must be incurred by the father representing the estate or purporting to be for the benefit of the estate or in some capacity other than his personal capacity. The words in 44 Cal. 524 are "*In every other event* it is open to execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against *the father alone*" and there is nothing to qualify the words "the father alone." The decision in 44 Cal. 524 is to the effect that, once a simple money decree is passed against the father and manager of a joint Hindu family, that simple money decree can be executed by the execution creditor against the whole of the estate, and will operate against the interests of the sons, unless the debt has been incurred for illegal or immoral purposes. The decision in 15 A.L. J.R. 437 lays down an absolutely different proposition that joint family property cannot be transferred by an act of volition on the part of the manager, except with the consent of other co-parceners or for legal necessity or in payment of antecedent debts, and that the

HINDU LAW—Debts—Liability.

doctrine of the pious duty of a Hindu son to satisfy his father's debts can have no operation to validate such a transfer, so long at any rate as the father is alive. But in order to apply the principle of the second decision, there must be a transfer by the volition of the manager. (*Stuart*, J.) SHAMBU DIYAL SINGH *v.* ISWAR SARAN. **1923 All. 306.**

——*Debts—Liability—Grandfather's debts—Liability of grandsons—Debt of granduncle accepted by grandfather.*

Where the joint family property was mortgaged in favour of the plaintiff by the grandfather of the defendants along with other adult members of the joint family in favour of the plaintiff and it was found that the mortgages had been executed in renewal of an earlier mortgage which in its turn was executed, in satisfaction of a debt of the grandfather's brother. *Held*, in a suit to enforce the mortgage, that the grandfather of the defendants having accepted the debts of his brother as a debt payable by the joint family, the grandsons were liable for the mortgage. (*Piggott and Sulaiman*, JJ.) RAM RATAN MISIR *v.* KAPIL DEO SINGH. **L.R. 3 A. 541=1923 All. 20.**

——*Debts — Liability of heirs — Suit against widow and brothers of deceased—Form of decree.*

In a suit against the widow and brothers of deceased executant of a bond not for a joint family debt a decree should be given against the widow for assets in the hands of the widow. (*Piggott*, J.) PAHLWAN SINGH *v.* JANKI. **40 All. 17=42 I.C. 858=15 A L.J. 849.**

——*Debts—Liability for—Father and son*

Where father borrowed first and then son took upon himself liability and borrowed further, *held*, the father is not liable even for the debt incurred by him unless family necessity has been proved. (*Campbell*, J.) BALLA *v.* BARU MAL. **1923 Lah. 685 (2).**

——*Debts—Liability.*

Debt incurred by any member of a joint Hindu family cannot bind the other members unless it is shewn from the facts of the case that the loan was either taken for the benefit of the family or for the purposes of a joint family business. (*Leslie-Jones*, J.) BHURA *v.* BANARASI DAS. **174 P.L.R. 1915=30 I C. 481 (2)=113 P.W.R. 1915.**

——*Debts—Liability of heir.*

A person claiming a share in a deceased Hindu's property is bound to contribute proportionally to the amount required for liquidating his debts and funeral expenses. (*Robertson and Beadon*, JJ.) THAKAR SINGH *v.* UJAGAR SINGH. **8 P.W.R. 1913=18 I.C 583=26 P.L.R. 1913.**

——*Debts—Liability—Debts by managing member.*

Members of a joint Hindu family are liable only to the extent of the joint family property, for the debts contracted by the managing member for family necessity and the liability cannot be enforced personally against them. (*Kumaraswami Sastri*, J., *Krishnan and Odgers*, JJ.) P. RAMA PATTER *v.* A. VISWANATHA PATTER. **41 M L.J. 567=15 L.W. 130=(1922) M.W.N. 27=66 I.C 155=30 M L.T. 209.**

——*Debts—Liability—Partition.*

A partition of a joint family, after a debt is incurred for the benefit of the family, does not relieve the co-parceners from liability for the debt to the extent of the family property in their hands. (*Sadasiva Iyer and Napier*, JJ.) MUTHU REDDY *v.* CHINNASAMI REDDI. **12 L W. 403=(1920) M.W.N. 613=39 M.L.J. 486=59 I.C. 685=28 M.L.T. 308.**

——*Debts—Liability of family property—Necessity.*

All co-parceners are liable on a pro-note executed by two of them for family necessity the liability being imposed by Hindu Law apart from the contract entered into by the other members. (*Srinivasa Aiyangar*, J.) CHINNIAH CHETTY *v.* TIKKANI RAMASWAMY CHETTY. **31 I.C. 317.**

——*Debts—Liability for—Pious obligation—Death of son—Liability of mother succeeding to estate of her son.*

There may be no pious obligation on a mother succeeding to the estate of her son for the payment of the debts due by her husband, but if the son has succeeded to the estate of his father, the person who succeeds such son is as much liable for the payment of the debt due by his father to the extent of the family property, unless it is tainted with immorality, as a person who would directly succeed to the property on his death. (*Kanhaiya Lal*, J C.) SHEO NANDAN LAL *v.* SHEO BALAK. **9 O. & A.L R 264=10 O L J. 303=1923 Oudh 251.**

——*Debts — Liability — Share in joint family—Insolvency Court — Jurisdiction—Receiver—Partition.*

A share in joint family property is not saved from attachment and sale and, therefore, is not outside the jurisdiction of the Insolvency Court. As the share in the joint family vests in the Receiver who can sue for its partition. (*Daniels and Dalal*, A.J.Cs.) LAL BAHADUR *v.* PASPAT PRASAD. **10 O.L.J. 31=9 O. & A.L R. 173=1923 Oudh 151.**

——*Debts — Liability — Presumption — Joint family.*

If two branches of a family form a joint family each branch is liable for the debt due from the family and the member incurring the debt is presumed to have authority to do so. (*Das and Adami*, JJ.) INDER CHAND *v.* BIDYADHAR PANDE. **1921 Pat. 107=2 P.L.T. 111=60 I.C 232=5 P.L.J. 744.**

Debts—Manager.

———*—Debts—Manager—Powers of borrowing —Necessity—Interest—Rate of,*

The manager of a join. Hindu family has authority to borrow money upon reasonable commercial terms for purposes of necessity and all terms of the mortgage in excess of this necessity, are beyond the scope of his authority. (*Lord Parmoor*) RAM BUJAWAN PRASAD SINGH *v.* NATHURAM. **44 M L J. 615 = 4 P.L.T. 29 = 32 M.L.T. (P.C.) 129 = 2 P. 285 = 38 C.L.J. 25 = (1923) M W N. 382 = 1 P.L.R. 445 = 18 L.W. 767 = 25 Bom L.R. 568 = L.R. 4 P.C. 75 = 50 I.A. 14 = 1928 P.C. 37 (P.C.).**

———*Debts—Manager—Agreement to contribute—Relief.*

The manager of a Hindu family sued on an agreement by the members of the family whereby he was entitled to recover one-half of the amount paid by him for family debts but a part of such debts was not for family purposes, *held* that it would be unjust and inequitable to give him decree for a half of the entire amount, as he has forfeited his claim to the sum misapplied and is entitled only to a share of the balance outstanding. (*Viscount Cave*). POKHAR SINGH *v.* JAGU SINGH. **2 Pat. L.T. 587 = (1921) M.W N. 66 = 25 C W.N. 745 = 61 I C. 681 = 3 U.P.L.R. (P.C.) 31 (P.C.).**

———*—Debts—Manager—Hundi executed for family necessity—Liability of other members.*

Where the manager of a joint Hindu family executes a negotiable instrument and borrows money for joint family purposes the whole of the joint family property including the share of the junior members would be liable for the hundi. (*Ryves and Daniels*, JJ.) RAGHUNATH SINGH *v.* SRI NARAYAN. **45 All. 484 = 21 A.L J. 323 = L.R. 4 A. 211 = 1923 All. 424.**

———*Debts—Manager— Promissory note— Liability of co-parceners.*

Where a promissory note is executed by a member of a joint Hindu family as manager the other members cannot be made liable on a suit on the pro-note, though they would be liable for the debt. (*Macleod*, C.J. *and Crump*, J.) VITHAL RAO *v.* VITHAL RAO. **25 Bom. L R, 181 = 1923 Bom. 244.**

———*Debts—Manager—Binding nature of —Onus.*

There is no presumption that a debt contracted by the manager of a Hindu family is contracted for the benefit of the family and the burden is on the creditor to prove necessity or family benefit. 34 A. 135; 113 P.W.R 1915; 48 P.W.R. 1919, Rel. (*Martineau and Zafar Ali*, JJ.) KHAZANA MAL *v.* JAGAN NATH. **4 Lah. 200 = 5 Lah. L J. 236 = 1424 Lah. 44.**

———*Debts—Manager — Decree against— When binding on other members.*

A decree passed against the manager of a joint family as representing the family, provided it be in respect of a debt contracted by him for family necessities or for the family business may be executed against the whole co-parcenary property. 36 A. 383 (P. C.), Rel. But it must be shown that the manager was sued in a representative capacity. There is no presumption that a debt contracted by the manager of a Hindu family was contracted for the benefit of the family. In each case it must be proved that the debt for which all the members of the family are sought to be made liable was incurred for the benefit of the family. 174 P.L.R. 1916, Ref. (*Abdul Raoof and Harrison*, JJ.) MELA MAL *v.* GORI. **3 Lah. 288 = 66 I.C. 485 = 1922 Lah. 200.**

———*—Debts—Manager—Liability of minor and adult co-parceners.*

Where the manager contracts debts for the ordinary purposes of the family business, the co-parceners whether adult or minors are liable but only to the extent of their share in the property. (*Broadway and Abdul Raoof*, JJ.) BISHEN SINGH *v.* KIDAR NATH. **62 I.C. 800 = 2 Lah. 159.**

———*Debts—Manager—Presumption.*

Debt contracted by managing member of joint Hindu family is not presumed to be for the benefit of the family. (*Rattigan*, C.J.) RAM DHAN DOSS *v.* RAMJI DAS **50 I.C. 215.**

———*—Debts—Manager—Joint family—Proof of the propriety—Required—No presumption.*

It cannot be presumed that debt incurred by the manager of joint Hindu family is contracted for the benefit of the family or firm. It must be proved from the facts of the particular case. ((*Leslie Jones*, J.) BHURA *v.* BANARSI DAS. **174 P.L.R. 1915 = 30 I.C. 481 (2) = 113 P.W.R. 1915.**

———*Debts—Manager—Necessity—Proof of —Non-production of accounts—Effect of.*

The burden of proving necessity for a loan contracted by the manager of a joint Hindu family is on the creditor who has advanced money on the security of the joint family property But if he is unable to establish legal necessity, he is still entitled to succeed if he shows that there was a representation made to him as to the existence of a legal necessity and that he made an honest inquiry and that he was satisfied that there was such a necessity. It is very often impossible for the creditor to compel third parties to produce their account books and the plaintiffs cannot fail because the third parties did not produce the account books. (*Das and Adami*, JJ.) CHINTAMANI MAHAPATRA *v.* SATYABADI KAR. **1 P. 715 = 1923 P. 71.**

———*Debts—Manager—Duty of lender—* Onus *of proof.*

A lender must satisfy himself by honest enquiry that the manager is acting for the

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benefit of the estate. The representation of the manager is not sufficient. The lender is not bound to see to the application of the money but if he does to it the question of enquiry becomes immaterial. The lender's act will be *mala fide* where it is shown that he must have known that the transaction was bound to involve the family in ruin and that the borrower was acting in his own interest rather than in the interest of the family. Where the *karta* exercises his discretion *bona fide* and for the benefit of the estate it should not be narrowly scrutinized by the Court. The onus of proof is on the alienee to prove that the charge created by the *karta* was for justifying necessity or for the benefit of the family. Where a charge is created by the substitution of a new security for an older one and the consideration for the older one was an old precedent debt, there is *prima facie* presumption in the lender's favour of a consideration that bind the estate. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN. **66 I.C. 625.**

——— *Debts—Manager — Necessity—Mor ey borrowed to obtain thickka lease.*

The manager of a joint Hindu family can borrow money to obtain a *thicca* lease for the family benefit. (*Das and Ross*, JJ) SADHU SARAN PRASAD SINGH *v.* BRAHMADEO PRASAD SINGH. **2 P. L.T. 318= 61 I.C. 20=6 P.L.J. 256.**

——— *Debts —Manager—Powers of—Authority to borrow—Junior member.*

Where a Hindu joint family consisted of two branches, and a member of one of such branches borrowed money on a mortgage for the purposes of the family, *held*, that the presumption was that such member had authority to borrow the money for joint family necessity and that the mortgage was, therefore, binding on the joint family. (*Das and Adami*, JJ.) INDERCHAND *v.* BIDHYADHAR PANDAY. **60 I.C. 282=5 P.L.J. 744.**

———*Debts—Manager—Trade—Liability of sons.*

The manager of a joint family has no authority whatever to affect or dispose of any portion of joint family property in order to enable him to embark on speculative transactions but the mortgagee is not bound to satisfy the Court in each case that the transaction was bound to benefit the joint family. There is a certain element of risk in every business transaction. A son is bound to pay the commercial debt of his father. 39 Cal. 862, Ref. Where a mortgage was executed by the manager of a joint Hindu family in order to pay for the premium of a lease of 3,000 bighas of khudkasht land and there was every probability that the transaction would be a profitable one for the joint family, it was held that the transaction was binding on the joint family. (*Das and Adami*, JJ.) SHEOTHAL SINGH *v.* ARJUN DAS. **1920 Pat. 155=56 I.C. 879= 1 P.L.T. 136.**

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Debts—Necessity.

———*Debts—Necessity—Burden of proof.*

The burden of proving that there was a necessity to pay a rate of interest in excess of the ordinary commercial terms is on the creditor. Where the junior members of the family in their written statement plead absence of necessity for a loan by the manager and that the joint family properties are not liable for the said debt it is open to the defendant to prove that the interest on the loan was exhorbitant and far in excess of the ordinary commercial rate and therefore not binding on the family. (*Lord Parmoor*) RAM BUJAWAN PRASAD SINGH *v.* NATHU RAM. **44 M.L.J. 615= 4 Pat L.T. 29=32 M.L.T. (P.C.) 129= 2 Pat. 285=38 C.L.J. 25= (1923) M.W.N. 382=1 Pat. L.R. 445= 18 L.W. 767=25 Bom. L.R. 568= L.R. 4 P.C. 75=50 I.A. 14= 1923 P.C. 37 (P.C.)**

———*Debts—Necessity—High interest.*

Where the rate of interest in a mortgage executed by the manager of a joint Hindu family is high the mortgagee must prove necessity for borrowing at such high rate failing which the Court has power to award a reasonable rate of interest. (*Lord Phillimore*). NAZIR BEGAM *v.* RAO RAGUNATH SINGH. **41 All. 571=46 I.A. 145=23 C.W.N. 700= 26 M.L.T. 40=11 L.W. 188= 17 A.L.J. 591=21 Bom. L.R. 484= 30 C.L.J. 86=(1919) M.W.N. 498= 50 I.C. 434=1 U.P.L.R. (P.C.) 49= 36 M.L.J. 521 (P.C.). [On appeal from 19 I.C. 639.]**

——— *Debts—Necessity.*

In a case where a mortgagee wishes to enforce a charge against the family property the burden lies on him to satisfy the Court that the mortgage transaction had been entered into for family necessity or in lieu of antecedent debt or with the consent, express or implied, of all the members of the family. A long series of renewals of mortgage transactions extending for over a generation without any protest by any member of the family would show its acquiescence, and raise a fair presumption, that if there had not been a valid necessity for them, some objection would have been raised. (*Lindsay and Sulaiman*, JJ.) INAYAT ILAHI *v.* HARDEO SAHAI. **45 A. 692= 21 A.L.J. 610=1924 All. 29.**

———*Debts—Necessity.*

Whether the rate of interest is unduly high a creditor in order to bind the estate, must prove not only the necessity of the loan but also the necessity to borrow it at so extravagent a rate. 20 A.L.J. 233; 30 A. 394; 46 I.A. 145, Ref. to. (*Ryves and Daniels*, JJ.) RAGUNATH SINGH *v.* SRI NARAIN. **43 A. 484= 21 A.L.J. 323=L.R. 4 A. 211= 1923 All. 424.**

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———*Debts—Necessity — Speculative litigation.*

Where the manager of a joint Hindu family borrows money for the purposes of conducting a speculative litigation which is successful and might enure for the benefit of the family, the debts cannot be justified on the ground of legal necessity. If the litigation resulted in benefit to the estate the debts would be binding on equitable principles. 4 A. 532 ; 44 I.A. 147, referred to. (*Rafique and Lindsay*, JJ.) BHAGWAN DAS *v.* MAHADEO PRASAD PAL.

45 A. 390=21 A.L.J. 271=1923 A. 298 (2).

———*Debts—Necessity—Debts contracted by guardian—Enquiry.*

A creditor of a Hindu minor is not bound to see to the application of the money. If a person dealing with the manager of a family or with the guardian of a minor, does make inquiries and act honestly, the real existence of an alleged and reasonable necessity is sufficient to validate the debt and he is not bound to see to the application of the money. (*Kanhaiya Lal and Sulaiman*, JJ.) RAGHUBANS UPADHYA *v.* INDERJIT SINGH.

20 A.L.J. 886=L.R. 3 A. 470=45 A. 77=1922 All. 526.

———*Debts— Necessity—High rate of interest.*

As regards the rate of interest necessary or proper in a mortgage by the manager of a joint Hindu family no hard and fast rule can be laid down. The question in such a case is "what is a reasonable rate of interest" and a finding as to the reasonable rate of interest is really one of fact. Even if it is a matter of discretion, the High Court would not interfere in second appeal with the discretion of the Court below. (*Lindsay and Gokul Prasad*, JJ.) BINDESHRI PRASAD *v.* JAG PRASAD RAI.

L.R. 3 A. 498=1922 All. 335.

———*Debts — Necessity — High rate of interest.*

In a suit by the mortgagee regarding joint family properties mortgaged to him, he has to show it was necessary to borrow the money at the rate of interest specified, if it happens to be exorbitant (*Mears*, C.J. *and Banerjee*, J.) RAM SARUP *v.* BHARAT SINGH.

43 All. 703=64 I.C. 763=19 A.L.J. 744.

———*Debts—Necessity—Son not impleaded in suit on mortgage—Effect.*

A Hindu father mortgaged the family property to A and then sold it to B. A sued on his mortgage without impleading the son. B objected that the mortgage was not valid as the debt was not binding on the family. *Held*, that no decision as to the validity of the mortgage can be given until the son of the mortgagor was impleaded. (*Gokul Prasad and Lindsay*, JJ.) TIKAM SINGH *v.* NATHU.

63 I.C. 40.

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———*Debts—Necessity—Burden of proof.*

Mortgage of family property to obtain money to purchase Zemindari shares, the purchase being for the benefit of the family binds all the members. The mortgagee need only prove that he was told that Zemindari shares were to be purchased and that he believed it to be true. Mortgage of property to pay off a prior mortgage, the validity of which is admitted, and the prior mortgage, both are binding on the family. (*Banerjee and Sulaiman*, JJ.) TULA RAM *v.* TULSI RAM.

42 All. 559=60 I.C. 3=18 A.L.J. 699.

———*Debts—Necessity—Liability of sons.*

A mortgage by a Hindu father of joint family property in lieu of antecedent debts and debts incurred for the benefit of the family is binding on his son's share of the joint family property. The payment of a prior mortgage or the consideration for the acquisition of property for the joint family are debts for which the joint family is liable. (*Banerjee and Tudball*, JJ.) ATAR SINGH *v.* RAGHUNATH SAHAI.

55 I.C. 974=2 U.P.L.R. (All.) 118.

———*Debts—Necessity—Interest—High rate—Reduction of rate.*

It is incumbent upon a mortgagee suing to enforce his mortgage to prove not only the existence of family necessity for the mortgage but that there was necessity for borrowing at an onerous rate of interest. 36 M. L. J. 521, Rel. on. The rate of interest was reduced from 24 per cent. compound interest to simple interest at 18 per cent. per annum. (*Banerji and Piggott*, JJ.) RAMKHELAWAN *v.* RAM NARES SINGH.

41 All. 609=17 A.L.J. 738=51 I.C. 52=1 U.P.L.R. (H.C.) 97.

———*Debts—Necessity—High rate of interest.*

A mortgagee from a Hindu father must prove the necessity for a high rate of interest if he desires to claim such interest. Otherwise the Court will give a decree for such interest as is reasonable. 19 I. C. 639, 28 I. C. 21, Rel. (*Rafique and Lindsay*, JJ.) BIKHI SAHU *v.* KODAI PANDAI. **50 I.C. 814=17 A.L.J. 580.**

[Also 50 I.C. 434=41 All. 571 (P.C.)]

———*Debts — Necessity — High rate of interest—Onus—Govt. Revenue.*

It is for the creditor to show that there was necessity for the loan and the payment of a high rate of interest was necessary. Money borrowed for payment of Government revenue and utilised for that purpose is for family necessity. (*Richards*, C.J. *and Banerji*, J.) GAYA PRASAD TIWARI *v.* RAMPHAL MISRI.

28 I.C. 21=13 A.L.J. 246.

———*Debts — Necessity — High rate of interest.*

Sons are not bound to pay any exorbitant rate of interest which their father may choose

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to promise to pay on a debt borrowed by him in the absence of clear proof of necessity therefor. (*Karamat Hussain and Chamier*, JJ.) NATH MAL DAS *v.* DALIPH SINGH. **13 I.C. 401.**

———*Debts—Necessity—Liability of other members.*

There is no presumption that a debt contracted even by the manager of a joint family is for a necessary purpose. 34 All. 185, Ref. Plaintiff must prove benefit or consent or necessity. (*Karamat Husain and Chamier*, JJ.) GANPAT RAI *v.* MUNNI LAL. **34 All. 135=13 I.C. 34=9 A.L.J. 54.**

———*Debts—Necessity — Criminal charge against a member—Fund to defend against—For family necessity.*

Money secured by a mortgage of a joint family property, for defending a member of the family against a criminal charge is raised for family necessity and the mortgage is binding on the joint-family. (*Karamat Husain and Chamier*, JJ.) BENI RAM *v.* KUNWAR MAN SINGH. **8 A.L.J. 1015=11 I.C. 663=34 A. 5.**

———*Debts—Necessity — Representation by father.*

Where the creditor lends his money on a representation made by a father that the course which he proposes to take a course not unreasonable in itself is calculated to promote the interest of his family, the creditor ought not to suffer because owing to the misconduct of the father, things turn out badly. Under these circumstances nothing prevents him from levying execution on the family property to satisfy a decree for money against the father personally. (*Richardson and Huda*, JJ.) MUKTI PROKASH NANDE *v.* ISWARI DEI DEBI. **57 I.C. 858=24 C.W.N. 938.**

———*Debts—Necessity — Suit just within time—Evidence Act, S. 114—Conduct.*

Although a suit to set aside alienation by a father on the ground, among others, of want of necessity, was within limitation, yet the conduct of the plaintiff in instituting the suit just at the close of the period prescribed, was held to be an important factor in determining the nature of the transaction and in finding out whether the alienation was or was not for necessity. The mere fact that the area of the property comprised in the mortgage forming the antecedent debt is not known does not justify an inference of want of necessity. (*Moti Sagar*, J.) DALJIT SINGH *v.* HARI CHAND. **1923 Lah. 669.**

———*Debts—Necessity.*

Debts incurred for a litigation in respect of the abduction of the alienor's wife, may be reasonably regarded as necessary. (*Broadway*, J.) ANOKH SINGH *v.* SAPURAN SINGH. **1923 Lah. 660.**

———*Debts—Necessity—Antecedent debt due to third party.*

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The existence of the antecedent debts due to third parties constituted valid necessity. (*Scott-Smith and Fforde*, JJ.) MT. BASANTI *v.* CHANDA SINGH. **1923 Lah. 502 (2).**

———*Debts—Necessity—Onus of proof—Presumption.*

In suits by creditors for the money due from joint family, no general and inflexible rule can be laid down ; the presumption proper to be made will vary with circumstances and must be regulated by and dependent on them. (*Broadway and Zafar Ali*, JJ.) CHALA RAM *v.* KISHAN CHAND. **1923 Lah. 462 (2).**

———*Debts—Necessity—Onus on creditor.*

The onus of proving necessity for a debt contracted by the manager is on the creditor who seeks to bind the other members of the family. (*Rattigan*, C.J. *and Scott-Smith*, J.) HAR KISHEN *v.* LAHORE BANK LTD. **51 I.C. 712=64 P.R. 1919.**

———*Debts—Necessity—Proof.*

Debts contracted by the manager of a joint Hindu family or a firm is not necessarily for purposes of family or firm and the credit must prove the fact in every case. 172 P.L.R. 1915 Diss; 34 All. 135, Foll. (*Martineau*, J.) FIRM PARAS RAM JWALA DAS *v.* GIAN CHAND **50 I.C. 36.**

———*Debts—Necessity—Proof—Liability of members of a joint Hindu family.*

There is no presumption that a debt borrowed even by the manager of a Hindu family was contracted for the benefit of the family or firm. 34 All. 135, Rel. (*Leslie Jones*, J.) BHURA *v.* BANARSIDAS. **174 P.L.R. 1915=30 I.C. 481=113 P.W.R. 1915.**

———*Debts—Necessity—Debt for the benefit of family—Promised by son—Liability under.*

Where a debt was contracted by the father in a joint Hindu family, for family necessity and when he was away from home, his wife and son signed an acknowledgment to save the bar of limitation and the dealings with the creditor continued till finall accounts were settled and in the absence of the father, the son and his mother signed a promise to pay the debt. *Held* that the promise signed by the son and his mother was binding on them in as much as the debt contracted by the father was for the joint family, and hence due by its members under S. 25 of the Contract Act. (*Kumaraswami Sastri, Krishnan and Odgers*, JJ.) P. RAMA PATTER *v.* R. VISWANATH PATTER. **41 M.L.J 567=15 L.W. 130=(1922) M.W.N. 27=66 I.C. 155=30 M.L.T. 209.**

———*Debts—Necessity—Marriage expenses—Females.*

The expenses incurred in the bangle ceremony and Simantham ceremony of the daughter of a deceased Hindu co-parcener do not create any legal obligation on the girl's

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uncles to discharge. (*Sadasiva Aiyar and Burn*, JJ.) VISALAKSHI AMMAL *v.* KALI NARAYANASWAMI AIYER. **10 L.W. 540 = 33 I.C. 796 = (1919) M.W.N. 878.**

———*Debts—Necessity—Proof—Liability of other members—Onus.*

The onus of proving that the debt by manager is for the family benefit lies on the creditor in the first instance but if the members of the joint family withhold the account books of their business they cannot rely on the weakness of the plff.'s case. The onus shifts to them. (*Wallis*, C.J. *and Ayling*, J.) GURUSAMI NADAN *v.* GOPALASAMI ODAYAR. **42 Mad. 629 = 36 M.L.J. 568 = (1919) M.W.N. 301 = 50 I.C. 775 = 9 L.W. 547.**

———*Debts—Necessity — Pro-note executed by one member—Promisee's duty.*

The payee of a pro-note by one member of a joint family must enquire as to the existence of family necessity, but need not see to the application of the money. (*Ayling and Seshagiri Aiyar*, JJ.) NATARAJA NAICKEN *v.* AYYASAMI PILLAI, **5 L.W. 410 = (1917) M.W.N. 230 = 32 M.L.J. 354 = 38 I.C. 339 = 21 M.L.T. 405.**

———*Debts—Necessity — Marriage expenses—Whether binding.*

Marriage being an obligation on Hindus who do not desire to become perpetual Brahmacharis or Sannyasis, debts incurred for marriage expenses of a male co-parcener are binding on the family. (*Wallis, Sundara Aiyar and Sadasiva Aiyar*, JJ.) GOPALKRISHNAMARAJU *v.* VENKATA NARASARAJU, **37 Mad. 273 = 23 M.L.J 288 = 12 M L.T. 292 = 17 I.C. 808 = (1912) M.W.N. 903 and 1231.**

———*Debts—Necessity—Evidence of recitals.*

In a suit on mortgage bond by a Hindu father, the recital in the bond that it was executed for the discharge of antecedent debts is legal evidence against the sons. The Court is not bound, from such recital, to draw a presumption, that the bond was for the purpose of discharging antecedent debts. 6 M.I.A. 393, Dist. (*Sundara Iyer and Sadasiva Iyer*, JJ.) GANGISETTI RAMAYYA *v.* KALLIKA PERRAYYA. **16 I.C. 411 = (1912) M.W.N. 959.**

———*Debts—Necessity — Marriage expenses—Liability of co-parceners.*

The maternal uncle giving away a girl in marriage where the paternal grandfather and uncle have practically abandoned guardianship, is entitled to recover the expenses from the family property in the hands of the paternal grandfather though at the time of the marriage they were in a state of pollution. A marriage celebrated during a period of pollution is not on that account alone invalid. (*Abdur Rahim and Sundara Aiyar*, JJ.) VENKADAM NARAYANA IYER *v.* SIVA SUBRAMANIA IYER. **13 I.C. 985 = 22 M.L.J. 49.**

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———*Debts—Necessity — Marriage expenses of a member.*

The mortgage of a family property to meet the expenses of the marriage of a member of the family is binding on all male members of that family. (*Benson and Sundara Iyer*, JJ.) MARINA KRISHNAYYA *v.* DODISETTI RAMANNA. **12 I.C. 539 = (1911) 2 M.W.N. 380.**

———*Debts — Necessity — Marriage of daughter — Liability of co-parceners for expenses.*

The co-parceners are bound under Hindu Law to pay the reasonable expenses of the daughter's marriage of a co-parcener. (*Benson and Sundara Iyer*, JJ.) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR. **35 Mad. 728 = 21 M.L.J. 600 = 10 M.L.T. 57 = 11 I.C. 570 = (1911) 2 M.W.N. 285.**

———*Debts—Necessity—Expenses of criminal case—Purchase of war bonds.*

Debts incurred by the manager in defending himself against a criminal charge are payable by the family. A sum of Rs. 32,000 is not an unreasonable expenditure in the case of a respectable family. Debts incurred for purchasing war bonds and thus assuring a steady income to the family are also binding on the family. 4 Pat. L.J. 653, Rel. (*Kotval and Prideaux*, A.J.Cs.) NIMBAJI *v.* KISAN LAL. **65 I.C. 668.**

———*Debts—Necessity — Representation by father or manager—Necessity for inquiry—Recitals.*

The representations of the borrower are not merely evidence, but may in particular circumstances be sufficient to shift the burden of proof from the lender to the person impeaching the debt or alienation. Something more than mere representations of the borrower is necessary to constitute reasonable inquiry on the part of the lender especially where other avenues of inquiry were open to the borrower. 6 M.I.A. 393; 35 M. 108, foll. (*Hallifax*, A.J.C.) GANBA *v.* SHRI VISHWESHWAR MAHADEO DEOSTHAN OF NAGPUR. **4 N.L.J. 26 = 64 I.C. 263 = 17 N.L.R. 194.**

———*Debts—Necessity—Pre-emption decree—Payment of.*

The fact that a transaction is entered into by all the adult members of the family is sufficient to raise a presumption of necessity. An amount payable under a pre-emption decree is a debt for which the manager is justified in borrowing money on the security of the family property. (*Daniels*, A.J.C.) SHAM SHER DATT SINGH *v.* LALTA SINGH. **72 I.C. 1000 = 9 O. & A.L.R. 259.**

———*Debts—Necessity—Loan to save family business.*

Where the manager borrows money to save the family property and to remove the fear of disturbance likely to be caused in the family business, the existence of necessity may be

presumed, where there is nothing to show that the lender acted otherwise than in good faith. If a previous loan on a pro-note by manager binds the family, a subsequent mortgage in lieu of it cannot be impeached. (*Stuart and Kanhaiya Lal*, A.J.Cs.) PALAK RAM *v.* RAM SUNDAR. **7 O.L.J. 530=60 I.C. 410= 2 U.P.L.R. (J.C.) 168.**

———*Debts—Necessity— Interest— Exorbitant rate—Debt by Hindu father on credit of family property.*

In case of debts contracted by a Hindu father on the credit of the family property Courts have a discretion to interfere if the interest charged is excessive or exorbitant. The appellate Court will be slow to interfere where it can be shown that such discretion has been exercised in a reasonable manner. (*Lindsay*, J.C.) DARGAHI *v.* CHAUDHURI RAJESHWARI PERSHAD. **48 I.C. 753= 21 O.C. 265.**

——— *Debts — Necessity — Interest — High rate.*

A creditor who advances money to a Hindu widow for legal necessity at a high rate of interest is not entitled to recover interest at that rate, unless he explains why that rate was fixed. In such cases the creditor should be allowed a reasonable rate of interest. (*Lindsay*, J.C.) DWARAKA PRASAD *v.* PRITHI PAL SINGH. **47 I.C. 106=5 O.L.J. 271.**

———*Debts—Necessity—Interest.*

Debt carrying exessive interest does not bind the son so far as an onerous rate of interest is concerned unless it is justified by the state of the family, the burden of proving which lies on mortgagee even as deft, and if a decree is obtained against father on the footing of such interest, sons must be relieved from liability under the decree if they pay reasonable interest. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SADHO CHARAN PRASAD *v.* RAM RATAN. **40 I.C. 369=4 O.L.J. 337.**

———*Debts— Necessity — Proof — Family necessity.*

There is no presumption that debts incurred by members of a joint Hindu family were incurred for family necessity; the fact must be proved by the creditor although it may be difficult for him to adduce evidence on the point owing to a lapse of time. In a case of a transfer of family property by some members there is no presumption that the remaining members consented to the transfer. (*Stuart*, A.J.C.) BISHWANATH SINGH *v.* RAMPAL SINGH. **33 I.C. 778=3 O.L.J. 26.**

———*Debts — Necessity —Proof — Trading family.*

No presumption that debts incurred by joint Hindu family were incurred for necessity. But in the case of trading families manager has implied authority. So the creditor need not enquire into the purpose. (*Lindsay*, J.C.) GHANSHYAM DAS *v.* HARDEI. **32 I.C. 380=2 O.L.J. 562.**

———*Debts—Necessity—Mortgage by father —Necessity not proved—Decree for sale—Personal decree—Liability of surviving members.*

Where property of a joint family is mortgaged by the father and there is no allegation of legal necessity it is incumbent on the mortgagee to prove that the sons and grandsons of the original mortgagor were liable to discharge the debt and that the property in their hands is liable to be sold. The mortgagee cannot get a mortgage decree unless he proves that the money was borrowed for purposes which are binding on the joint family. (*Lindsay*, J. C.) RAMNATH *v.* MAHADEO PRASAD. **30 I.C. 382=2 O.L.J. 378.**

———*Debts—Necessity—Marriage expenses —Twice-born.*

Marriage is obligatory on Hindus who do not desire to adopt the life of a perpetual Brahmachari or Sanyasi and so the debts reasonably incurred for the marriage of a twice-born Hindu are binding on the joint family. (*Kanhaiya Lal*, A.J.C.) GHAZAFFAR HUSSAIN *v.* MAHABIR PRASAD. **17 I.C. 309.**

———*Debts—Necessity—Borrowing by manager—Rights of creditor—Interest—Enforceability against family.*

When a contract of loan entered into by a head member or karta of a joint Hindu family is sought to be enforced against the other members on the ground of necessity, it must be shown not only that there was a necessity to borrow the principal sum but that the rate of interest agreed upon was also a necessity; in other words, that it was impossible for the karta or the head member to obtain a loan for family necessity except at the rate of interest agreed upon. The creditor in such a case has not only to show that there was a family necessity so as to bind the members of that family on behalf of the parties to the contract with respect to the loan advanced but that the rate of interest was the market or commercial rate. He will not be entitled to enforce a higher rate of interest against the other members and to make the joint family properties liable for interest higher than the current market rate of interest. (*Jwala Prasad and Ross*, JJ.) MAHADEO PRASAD *v.* BISSESSAR PRASAD. **2 P. 488=4 P.L.T. 707=1924 P. 71.**

——— ———*Debts—Necessity—Pressure of creditors —Proof of.*

Where there has been a long series of transactions it is not always possible for the creditor to prove exactly the purpose for which any particular item was borrowed, and in such a case, it is sufficient for the creditor to show that the family was in chronic need of money and that the moneys were advanced on the representation of the manager that they were

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needed for such object. Moreover where the necessity arises from the pressure of a judgment-debt the person dealing with the manager of a joint Hindu family he is entitled to treat the judgment as *prima facie* proof of necessity, and he is under no obligation to go behind the judgment in order to enquire whether the debt covered by the decree was for legal and binding necessity of the family. (*Das and Kulwant Sahay*, JJ.) DUKHIT OJHA *v.* JANKI SINGH.
4 P. L.T. 377 : 1923 P. 443.

——*Debts—Necessity — Manager — Decree against—Suit by junior member to set aside decree—What has to be proved.*

In a suit by the junior member of a joint family to set aside a decree against the manager as fraudulent, he has to show that there was no legal necessity for the debts sued for, and it is not for the creditor to show that there was legal necessity for it. Where the evidence adduced in a case based on fraud is equally consistent with the allegations of the plaintiff as with the denial of the defendants, a case of fraud is not established. (*Das and Bucknill*, JJ.) DAMODAR PRASAD *v.* RAM SARUP KUMAR.
4 P. L.T. 102 = 1923 Pat. 187 = 1. P.L.R. 252 = 1923 P. 327.

——*Debts—Necessity.*

Where some junior members were charged with offences in connection with family property and the manager then being in jail, the junior members raised a loan by a mortgage; *Held*, the mortgage was for a family purpose and was binding. The defence of a member of a joint family is regarded among the Hindus as a pious and necessary act to remove the stigma of disgrace upon the whole family consequent on a conviction. (*Jwala Prasad and Ross*, JJ.) DHANUKDHARI SINGH *v.* RAMBIRICH SINGH. **1 P. 171 = 1922 P. 553.**

——*Debts—Necessity—Marriage expenses of male members of joint family.*

Under the Hindu Law the marriage expenses of the male members of a joint Hindu family is a necessity and debts contracted to meet such expenses would be binding on his family. 37 Mad. 273; 32 All. 675; 32 Bom. 81, Foll. (*Das and Adami*, JJ.) DEBI LAL SAH *v.* NAND KISHORE GIR. **1 P. 263 = 3 P L.T. 759 = 1922 P. 22.**

——*Debts—Necessity—Proof of—Mortgage suit.*

In a mortgage suit, the mortgage was proved to have been executed by the ancestors of the defts. to pay a previous bond and it was also proved that the mortgagee was in possession without objection by defts. for twenty five years. *Held*, that no proof of necessity is required and that the conduct of the defts, amounted to acquiescence. (*Adami and Bucknill*, JJ.) RAM CHOWDHARI *v.* TILAKCHOWDHARY. **60 I.C. 387.**

HINDU LAW—Debts—Necessity.

——*Debts—Necessity—High rate of interest—Burden of proof.*

The principle that it is incumbent on those who support a mortgage made by the Manager of a joint Hindu family to show not only that there was a necessity to borrow but that it was not unreasonable to borrow at a higher rate of interest applies to the case of a mortgage. 6 C.L.J. 462; 41 All. 571; 41 All. 581, Ref. In the absence, however, of a specific plea in the written statement that there was no necessity to borrow at a higher rate of interest the burden of establishing that necessity does not lie on the mortgagee. (*Adami and Das*, JJ.) JAG SAHU *v.* RAID RADHA KISHUN.
5 P.L J. 287 = 1 P.L.T. 209 = (1920) Pat. 211 = 58 I.C. 867 = 2 U.P L.R. (P.) 127.

——*Debts—Necessity—Criminal litigation.*

A joint family member can use family funds in repealing a criminal charge. On the consent of the co-parcener members, a karta can alienate joint family property for family necessity. The consent of a son after the completion of a mortgage by the father is not the ratification of the deed but a presumptive proof of a joint family necessity. (*Das and Coutts*, JJ.) PREM SUKH DAS *v.* RAM BUJHAWAN MAHTO.
1919 Pat. 451 = 52 I.C. 964 = 1 P.L T. 34.

——*Debts—Necessity—Criminal prosecution of one of the members—Effect of.*

The stigma of a criminal charge against a member of a joint family being regarded among Hindus as a disgrace to all the members of the family, any expense incurred to protect a family, from such a threatened disgrace is necessarily in the interests of all the members of the family. Where, therefore, the Manager of a joint Hindu family raises money to defray the expenses of defending a criminal case against him, the family property is liable for the debts so incurred. (*Jwala Prasad and Das*, JJ.) HANUMAT MAHTON *v.* SONADHARI SINGH. **4 P L.J. 653 = 1920 Pat. 13 = 52 I.C. 734 = 1 P.L.T. 133.**

——*Debts—Necessity — Borrowing money for purchasing other property nearer home—Speculation.*

The onus is upon a creditor who advances money to the Manager of a Mitakshara joint family to prove legal necessity or benefit to the joint family or *bonafide* and reasonable inquiries relating thereto. The purchase of property near one's residence is a matter of sentiment and at best a speculation, and the money borrowed for the same, with interest and compound interest, leaving no margin for the profits but rather imposing a burden cannot be said to constitute legal necessity and is not binding upon the other members. The creditor must make a diligent enquiry into the alleged necessity

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and any representation made to him by the karta has little value. (*Atkinson and Kingsford*, JJ.) DIP NARAIN CHOUDHURY *v.* DEVENDRA NATH DAS. **43 I.C. 193=3 P.L.W. 181.**

———*Debts—Necessity—Government Revenue.*

Money borrowed for payment of Government revenue on the family property is a necessity binding on all the members of the family. (*Chamier*, C.J. *and Sharfuddin*, J.) RANJIT PRASAD *v.* RAM JALAN PANDEY.
1 P.L.W. 197=37 I.C. 833=1917 Pat. 113.

———*Debts—Necessity—Inquiry.*

The creditor must show that he made reasonable enquiries as to necessity for the loan. (*Chapman and Atkinson*, JJ.) MANDIL DAS *v.* MEGH NARAYAN DUBEY. **1 P.L.J. 39=34 I.C. 742=3 P.L.W. 45.**

Debts—Son's Liability.

———*Debts—Son's liability exists even in life time of father—Pious obligation.*

The law is now well established that under the Hindu Law the pious obligation of a son to pay his father's debts exists whether the father is alive or dead. Observations of their Lordships in *Sahu Ramachandra* v. *Bhup Singh* (44 I.A. 126) regarding the pious obligation of sons as not existing during lifetime of father disapproved. 11 A. 321; 4 I.A. 247; 13 I.A. 1; 15 I.A. 99; 16 I. A. 1; 17 I.A. 11; 44 I.A. 1; 15 All. 75; 28 Bom. 383 and 22 Mad. 49 Ref. (*Lord Dunedin*). RAJA BRIJ NARAIN RAI *v.* MANGAL PRASAD RAI.
21 A L J, 934 (P.C.)=46 M.L.J. 23=19 M.L.W. 72=33 M.L.T. (P.C.) 457=46 A. 95=51 I.A. 129=5 L.R.P.C 1=28 C.W.N. 263=5 P.L.T. 1=2 Pat. L.R (Civ.) 41=1924 P C. 50=(1924) M.W.N. 68=26 B.L.R. 500=11 O.L J. 107.

———*Debts—Son's liability—Mortgage—No necessity or antecedent debt — Rights of creditor.*

A mortgage of the joint family property by the father is void in the absence of proof of necessity or of an antecedent debt: the transaction itself gives to the mortgagee no rights against the father's interest in the joint family property. L.R. 17 I.A. 194, Appl. Exceptions to the above general rule may arise from special circumstances, *e.g.*, from a representation or undertaking by the mortgagor that he had power to mortgage the joint property. 12 B.L. R. 90, Dist. (*Viscount Haldane.*) LACHMEN PRASAD *v.* SARNAM SINGH. **39 All. 500=15 A.L J. 584=2 P L.W. 29=21 C.W.N. 990=33 M.L.J. 39=19 Bom. L R. 646=26 C.L.J, 97=(1917) M.W.N. 516=6 L.W. 334=40 I.C. 284=44 I.A. 163 (P.C.).**

HINDU LAW—Debts—Son's Liability.

———*Debts— Son's liability — Necessity—Antecedent debt— Pious obligation—Onus of proof.*

Under the law of the Mitakshara, the father in his capacity of manager and head of the family has power to affect or dispose of joint family property for estate or family necessity, but otherwise he has no power of sale or mortgage except for an antecedent debt. A borrowing on the occasion of a mortgage or in consideration of a sale is not such an antecedent debt. The exception only applies to the case where the father's debt has been incurred irrespective of the credit obtainable from the joint family property. To validate a mortgage for an antecedent debt not only antecedency in time but real dissociation in fact is required. The exception in this respect has been invoked for the protection of third parties who have taken their title for onerous consideration, and in good faith and should not be extended so as to cover a breach of trust by father. 31 All. 176, Appr,; 29 Mad. 200; 34 Cal. 184, Disappr. The pious obligation of the sons and grandsons under the Mitakshara law, to discharge their father's and grandfather's debts does not attach while the father and grandfather are alive and the latter cannot dispose of their shares in the joint family property on that ground. (*Lord Shaw*) SAHU RAM CHANDRA *v.* BHUP SINGH.
39 All 437=44 I.A. 126=21 C.W.N. 698=1 P.L.W. 557=15 A.L.J. 437=19 Bom. L R 498=26 C.L.J. 1=33 M.L J. 14=(1917) M.W.N. 439=22 M.L T 22=39 I.C. 280=6 L.W. 213 (P.C.).

———*Debts—Son's liability—Decree against father — Right, title and interest—Sale of — Purchaser's right — Mitakshara joint family.*

Under the Mitakshara Law a judgment against the father alone can always be executed against the whole joint family property except where the debt in respect of which the judgment was obtained was incurred for illegal or immoral purposes. The words "right, title and interest of the judgment-debtor (father)" in the sale certificate do not necessarily import that, when the father is the judgment-debtor, nothing but his share of the joint family property is sold. There is no reason why the execution creditor should be deprived of his undoubted rights by such a narrow construction. In cases of this kind the substance and not the technicalities of the transaction should be regarded. Having regard to the conduct of the sons in the case and to the price paid by the execution creditor, who purchased the property, it was held that the intention was to sell the whole property including the interest of the sons. 14 I.A. 77; 17. I.A. 11, Ref. to (*Lord Buckmaster.*) SRIPAL SINGH *v.* PRODYOT KUMAR.
44 Cal. 524=32 M.L.J. 133=15 A.L.J 147=(1917) M.W.N. 193=21 C.W.N. 442=26 C.L J. 220=21 M L.T. 222=19 Bom. L.R. 290=39. I.C. 252=44 I.A. 1 (P.C.).

HINDU LAW—Debts—Son's Liability.

——*Debt—Son's liability—Decree on mortgage—Suit by sons to recover.*

Hindu sons cannot recover joint family property which has been sold in execution of a mortgage decree against their father without showing that the mortgage debt was for illegal or immoral purposes. 48 C. 34 ; 42 A. 38 ; 39 A. 437, Rel. (*Ryves and Daniels*, JJ.) SITLA PRASAD *v*, MT. CHAMELI BAHU.

21 A L.J. 683 = L.R. 4 A. 326 = 9 O. & A.L.R. 766 = 1924 A. 111.

——*Debts—Son's liability—Decree against father.*

A decree against the father of a joint Hindu family cannot be executed against the whole family property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone. Where the properties of the family have been sold in execution of a decree against the father and purchased by a stranger, the sons cannot question the sale unless they can show that the debt was illegal or immoral. 39 A. 437 ; 44 A. 368 ; 15 A.L.J. 147, referred to. (*Lindsay and Sulaiman*, JJ). RAM CHANDER *v*. MAHOMED NUR. **45 A. 545 = 21 A.L J. 488 = L.R. 4 A. 237 = 1923 A. 891.**

——*Debts—Son's liability—Pious obligation—Death of father.*

Where the debt of the father is neither for legal necessity nor antecedent, the son is not under a pious obligation to pay it merely because the father is dead. (*Daniels*, J.) RAJA SINGH *v*. DURGA SINGH. **1923 A. 529 (1).**

——*Debts—Son's liability—Mortgage invalid—Pious obligation to pay debt.*

The liability of a son or grandson to pay the debt of his ancestor, which is not tainted with immorality or was not taken for illegal purposes, is not enforceable so long as the original debtor is alive and is capable of paying his debts. During the lifetime of the father apart from any question of family benefit or necessity the liability of a son to pay a debt due by his father is only contingent. The existence of that liability contingent or vested, has been utilised to build up the doctrine of antecedent debt to validate a mortgage or sale effected by the father to pay such debt ; and in many cases, a creditor has been allowed to recover a debt due by the father from the entire family property, if not tainted with immorality, as if the liability were concurrent. 44 A. 126 : 39 A. 237, Ref. If the attempt to enforce a mortgage on the theory of pious obligation fails, the right to attach the family property during the life time of the father on the strength of that pious obligation can be still less recognised because if no pious obligation exists, it must be as insufficient to support the one as to support the other. (*Stuart and Kanhaiya Lal*, JJ.) KISHAN SINGH *v*. CHEJJU SINGH. **L.R. 3 All. 609 = 1923 A. 206.**

HINDU LAW—Debts—Son's Liability.

——*Debts—Son's liability—Pious obligation of son during life time of father.*

As long as father is alive son's pious obligation does not arise and their share is not liable to attachment and sale in execution of a money decree against father. (*Gokul Prasad*, J.) RAMKISHORE *v*. ABDUL KARIM. **1923 All. 173 (1)**

——*Debts—Son's liability—Decree debt—Pious obligation—Extent of.*

A Hindu son is liable for the unsatisfied decree debts of his deceased father to the extent of the ancestral properties unless he shows that the debt was contracted for an illegal or immoral purpose. This is so even if the son was a party to the decree against the father. (*Piggott and Walsh*, JJ.) RAMANAND SHUKUL *v*. CHHOTEY LAL. **20 A.L.J. 969 = 1923 All. 124.**

——*Debts—Son's liability—Decree against father—Liability of entire family estate.*

Where there is a simple money decree against a Hindu father which is not shown to have been on the basis of a debt tainted with illegality or immorality, the decree can be executed against the father and the father's interest in the family property can be attached and sold. 39 A. 237, Dist ; 15 A.L.J. 147, Foll. (*Stuart and Sulaiman*, JJ.) KALYAN SINGH *v*. DHARAM SINGH. **20 A.L J. 721 = L.R. 3 All. 492 = 1922 A. 489.**

——*Debts—Son's liability—Father—Renewal of time-barred debts.*

A Hindu father can execute a fresh bond in lieu of time-barred debts contracted by him and the sons would be under a pious obligation to pay off the bond after his death. The Hindu Law does not recognise any rule as to the extinction of claims by the efflux of time. 6 M. 293, Foll. (*Gokul Prasad and Stuart*, JJ.) RAMKISHAN RAI *v*. CHHEDI RAI. **44 All. 628 = 20 A L.J. 577 = 1922 All. 402.**

——*Debts—Son's liability to pay father's debt in lifetime of father.*

The son's pious duty to pay his father's debt cannot be enforced in the life-time of his father and the son has the right to object to the payment of such debts out of his share when the father is alive. (*Gokul Prasad and Lindsay*, JJ.) SHEODAN SINGH *v*. BHAGWAN SINGH. **43 All. 496 = 19 A.L.J. 431 = 3 U.P L.R. (A.) 80 = 1922 All. 323.**

——*Debts — Son's liability — Father — Decree against.*

It is competent to the holder of a simple money decree against a Hindu father to attach and bring to sale in execution the whole family property including the son's shares therein, unless the debt where on the decree was obtain.

ed was tainted with immorality or illegality. (*Piggott and Walsh* JJ.) MOHAN LAL *v.* BALA PRASAD. **44 All. 649=L.R. 3 A. 515= 1922 All. 310.**

———*Debts—Son's liability—Father's debt contracted while estate under the Court of Wards.*

Where a Hindu contracted debts while his estate was under the Court of Wards and he was incompetent to contract, his son is under no pious obligation to pay off the debt. A bond executed in lieu of the debt is not enforceable against the son. (*Rafique and Lindsay*, JJ.) CHAUBEY BALDEO PRASAD *v.* BINDESHRI PRASAD. **20 A.L.J. 24=1922 All. 215.**

———*—Debts—Son's liability—Father—Mortgage debt.*

In the absence of proof of legal necessity or of an antecedent debt to discharge which a mortgage by a Hindu father was executed, the Court, would not enforce the mortgage against the son's share of the property on the ground of their pious obligation to pay their father's debt. 52 I.C. 108 not, Foll. 65 I. C. 950 ; 22 O.C. 84 ; 31 A. 176 Rel. (*Dalal*, A.J.C.) GAJADHAR BAKHSH SINGH *v.* BAIJNATH. **20 A.L J. 208= 8 O.L J. 603= 1922 All. 50.**

———*—Debts—Son's liability—Sale of family property in execution—Suit by son to set aside —Plea of immoral debt.*

The entire ancestral property belonging to a Hindu father and his sons was sold by a creditor in execution of a decree obtained by him against the father. On this the sons filed a suit for setting aside the sale alleging that the debt had been incurred for immoral purposes but this they failed to prove. In these circumstances the sale is valid and the creditor can sell the property. Further, sale of ancestral property by a Civil Court is not void altogether. (*Stuart and Ryves*, JJ.) DALIP NARAIN SINGH *v.* PARMAOTI BIBI. **42 All. 58=67 I.C. 931= 17 A.L.J. 982.**

———*—Debts— Son's liability— Mortgage—Decree for sale—Sale proceeds insufficient—Mortgagee's right only to proceed against son's mortgagor for balance—Personal remedy.*

In execution of a decree for sale on a mortgage against a Hindu father the only property comprised in the mortgages was sold. The sale proceeds, however, did not fully satisfy the mortgage, and for the remaining sum the decree-holder applied for a personal decree under O. 34, r. 6, of the C. P. Code. The decree was passed against the father alone, although the personal remedy under the first of the two mortgages had become time-barred. The father then died and the decree-holder sought to attach and to bring to sale the property of the joint family which had come to the son by survivorship. *Held*, that the application had been rightly dismissed as the personal decree passed against the father to which the son was no party was made up in part of the time-barred debt. (*Richards*, C.J. *and Banerjee*, J.) SHIAM BEHARI LAL *v.* BHURE LAL. **17 A.L J. 578.**

———*Debts—Son's liability—Time barred debt.*

The grant of a fresh deed by a Hindu father, in respect of a time-barred debt does not bind the son on the ancestral property. (*Tudball and Rafique*, JJ.) GIRDHARI LAL *v.* GOBIND RAM. **63 I.C. 23=19 A.L.J. 456.**

———*Debts—Son's liability.*

A mortgage by Hindu father to discharge debts contracted for immoral purposes does not bind the son's interest in the family. (*Walsh and Ryves*, JJ.) GOKUL SINGH *v.* GOKUL SINGH. **62 I.C. 111=3 U.P.L.R. (A.) 14.**

———*—Debts—Son's liability—Rash bargain by father—Liability of family property.*

The father bid at an auction sale and deposited one-fourth of the purchase-money, but failed to pay the balance upon which the property was resold and fetched a small sum. The judgment-debtor thereupon applied to recover the deficieney and an order was made to recover the deficiency by sale of the family properties. The son thereupon brought a suit to set aside that order. *Held* that the suit must succeed as what was due from the father was in the nature of a penalty and therefore not binding on the son. (*Tudball and Rafique*, JJ.) RAUTAN LAL *v.* BIRJBHUKAN SARAN. **61 I.C. 774.**

———*Debts—Son's liability.*

Debts incurred by a Hindu father for the benefit of the family, and not tainted with immorality are binding on his sons by reason of their pious obligation. A mortgage of family property to pay off a previous mortgage debt is binding on the family. (*Piggott and Kankaiyalal*, JJ.) LACHMI NARAYAN *v.* DEOKI. **59 I.C. 797.**

———*Debts—Son's liability—Decree on debt —Onus.*

To render a son liable for his father's debt the existence of a debt due by the father must be proved by the creditor. The fact that there is a decree against the father, obtained in a suit to which the son was not a party, is not evidence against the son. 39 All. 437, Foll. (*Banerjee and Piggott*, JJ.) BHAGWANT *v.* TULSI RAM. **51 I.C. 130=1 U.P.L.R. (H. C.) 48.**

———*Debts — Son's liability — Suit by creditor.*

Prima facie decree obtained against one cannot be executed by the attachment and sale of another's property. But the position of a son in a joint Hindu family is by reason of his pious duty to pay his father's debt not incurred for immoral purposes, very different from that of an ordinary third party. 13 Cal. 21, Ref. A creditor having obtained a decree against a Hindu father on a promissory note is entitled to put to sale the family property and the sons are entitled to show that the debt was such as

they were not liable to pay. 28 All., 288; 3 A. L.J. 433, Foll. A creditor suing on a pro-note executed by a Hindu father, who makes the sons parties to the suit but afterwards withdrawn the suit against the sons cannot be placed in a worse position as regards the execution of his decree than he would if the sons had not been impleaded. (*Tudball and Piggott*, JJ.) INDAR PAL *v.* IMPERIAL BANK.
37 All. 214=28 I.C. 593=13 A.L.J. 211.

———*Debts—Son's liability—Right of sons to avoid—Applicability to certain cases.*

The Hindu Law rule that the sons can avoid a decree passed against their father on showing that they were no parties to the decree and that the debt for which the decree was passed was such as could not bind them is not applicable to a case where they are not seeking to evade payment but offering to redeem the property mortgaged by their father. (*Rafique and Piggott*, JJ.) SUNDAR SINGH *v.* RATAN LALL.
36 All. 516=24 I.C. 612=12 A.L.J. 865.

———*Debts—Son's liability—Execution sale—Setting aside.*

Where ancestral property is sold in execution of a decree for a father's debt the son should prove that the debt was contracted for immoral purposes before he could set aside the sale. (*Lyle*, J.) PANARU SHUKUL *v.* BALDEO SAHAI. **21 I.C. 46.**

———*Debts—Son's liability — Mortgage—Compromise by the Manager—Liability of sons and grandsons.*

After executing a mortgage, a suit was brought by the Manager of joint Hindu family for declaration that the mortgage was fictitious. A compromise was effected for a certain sum. This compromise created a loan even if there was none in the beginning and there being sufficient consideration, the sons and grandsons were bound to discharge this debt. (*Ryves and Lyle*, JJ.) RAM KUBER PANDE *v.* RAM DASI.
35 All. 428=20 I.C. 44=11 A.L.J. 645.

———*Debts—Son's liability—Decree against father—Execution sale.*

As it is the pious duty of a Hindu son to pay his father's debt not connected with immoral purposes a sale for a payment of such debt would be binding on the son and his interests in the ancestral property and would give a complete title to the purchaser. (*Richards*, C.J. *and Banerjee*, J.) POKHPAL SINGH *v.* CHIDDU SINGH. **15 I.C. 903=9 A.L.J. 653.**

———*Debts—Son's liability—Extent of.*

The liability of son to pay his father's debts arises from the date when father fails to discharge his obligation. (*Karamat Hussain and Chamier*, JJ.) CHAMPALAL *v.* SHAW SUNDAR MALLI. **13 I.C. 530.**

———*Debts—Son's liability—Liability of grandsons.*

Grandsons cannot question the sale of joint family property in execution of a decree obtained against the grandfather merely on the ground that they were not parties to the suit. 25 All. 214; 28 All. 182; 7 A.L.J. 852, Foll.; 30 All. 256, Dist. (*Stanley*, C.J. *and Griffin*, J.) KEHRI SINGH *v.* CHUNILAL.
33 All. 436=9 I.C. 476=8 A.L.J. 216.

———*Debt—Son's liability—Personal decree against father—Creditor—Right of, to proceed against joint family property.*

The decision of the Privy Council in *Sahu Ram* v. *Bhup Singh*, 39 A 437 (P.C.), does not affect the rule that a creditor who has obtained a personal decree for money against a Mitakshara father, is entitled to levy execution against the entirety of the joint family property. (*Richardson and Huda*, JJ.) MADHU SUDHAN DAS GOSWAMI *v.* ISWAR DEYI DEBI.
48 Cal. 341=61 I.C. 25=24 C.W.N. 949.

———*Debts—Son's liability—Form of decree.*

Where the consideration for the mortgage was received by the mortgagor, the mortgagee cannot be held inoperative merely because the mortgagee has failed to prove that the money was applied as stated in the mortgage bond. He can get a decree to the effect that if the father's share is not sufficient to satisfy the decree, the son's share also will be sold. (*Chaudhuri and Newbould*, JJ.) BABU KRISHNA PRASAD *v.* BABU RAM PERSHAD.
33 I.C. 990=20 C.W.N. 508.

———*Debts — Son's liability — Minor—Guardian.*

Where the mother of a minor executed a bond on his behalf but not describing herself as guardian to pay a debt of his deceased father, the son and not the mother was liable for the same as it is a pious obligation on the son to discharge his father's debt. (*Mukerjee and Beachcroft*, JJ.) SIVA NARAYAN GHOSE *v.* RAMAKHYA GHOSE. **23 I.C. 877.**

———*Debts—Son's liability—Decree against father—Execution sale.*

'Right, title and interest' of a father might be the father's share alone or it might include the son's share also. It depends on the intention to be gathered from the circumstances of each case. The son's share too could be sold in execution of the decree against the father even though he was not a party to the proceedings in Court. Sale on execution of such decree would be held good if creditor had no notice of illegality or immorality. Sons need not be parties but if it is found that the interest of the father alone was sought to be proceeded against the fact that sons were not parties would be material. (*Chatterjee and Walmsley*, JJ.) HITENDRA SINGH *v.* RAMESHWAR SINGH. **22 I.C. 873=18 C.W.N. 42.**

———*Debts—Son's liability—Question to be determined in execution—C. P. Code, S. 53.*

The whole of the ancestral property and not merely that portion of it in the hands of a

HINDU LAW—Debts—Son's liability.

Mitakshara son, which upon partition would have represented the interest of the father, if a partition had been effected during his lifetime, is responsible for the satisfaction of the judgment debt in execution of a decree passed against the deceased Mitakshara father, where the loan was not incurred by the father for immoral purposes, 22 W. R. 56 ; 13 Cal. 21, Foll. S. 53, C P.C. (1908), provides that a question as to what property would be liable in execution, is to be determined in execution proceedings and not by a separate suit. (*Mookerjee and Carnduff*, JJ.) LACHMI PRASAD SINGH *v.* BASANT LAL.
16 I.C. 970=16 C.L J. 85.

———*Debts — Son's liability — Liability of grandson.*

A grandson is not liable to pay interest on the grandfather's debt. But when a decree was passed against both grandfather and father, the father being liable for interest and the mesne profits decreed, the son's son too is liable. (*Coxe and Chatterjee*, JJ.) RAMDEO PRASAD SINGH *v.* GOPI KOERI. **16 C.W.N. 383= 13 I.C. 349=15 C.L J. 256.**

———*Debts—Son's liability—Decree against father.*

A decree against the father on a mortgage by the father has no more force than the mortgage itself, which must be proved in order to bind the son for an antecedent debt or for legal necessity. (*Scott-Smith and Zafar Ali*, JJ.) HANS RAJ *v.* BALAQI MAL. **1923 Lah. 356.**

———*Debts—Son's liability—Father—Insolvency—Adjudication—Vesting of son's interest in official assignee—Remedy of sons.*

On the insolvency of a father governed by the Mitakshara Law, the whole of the joint family property including the interest of his sons, vests in the Official Assignee. But the sons have their remedy on their establishing that the debts of the father were illegal or immoral and that their sharers would not be liable for the same. 48 I.C. 526 ; 49 I.C. 848, not foll ; 7 B. 438 ; 11 B. 37 ; 19 M. 74 ; 42 C. 225, Ref. (*Shadi Lal. C.J., Chevis and Abdul Raoof*, JJ.) BIHARI LAL *v.* SAT NARAIN.
3 Lah. 329=1923 Lah. 1.

———*Debts — Son's liability—Mortgage by father.*

The son's share of the family property is not liable to satisfy a mortgage created by the father unless it is shown that the mortgage was created to discharge an obligation antecedently incurred by the father and the obligation was incurred wholly apart from the ownership of the joint estate. 39 A. 437 ; 51 A. 235 ; 6 P.L.J. 72, Foll. (*Scott-Smith and Abdul Qadir*, JJ.) LAKHU MAL *v.* BISHEN DAS.
3 Lah. 74=1922 Lah. 291.

———*Debts—Son's liability—Father—Insolvency of—Interests of sons vest in Receiver.*

HINDU LAW—Debts—Son's liability.

Where a Hindu father governed by the Mitakshara law is adjudicated an insolvent, the interest of the insolvent including that of his sons in the joint family property vests in the Official Assignee. The son must prove such circumstances as would exempt his share of family properties. 3 Lah. 329 (F.B.) Foll. (*Scott-Smith*, J.) FIRM OF RALIA RAM JOWANDA MAL *v.* OFFICIAL RECEIVER OF GUJRANWALA ESTATE. **69 I.C. 729.**

———*Debts—Son's liability—Pious obligation.*

A money decree against a Hindu father for a debt neither illegal nor immoral, whether incurred for family purposes or not, may be enforced in his lifetime by the execution sale of the entire co-parcenary property and is binding on the sons. In order to absolve a Hindu son from liability for his father's debts it is not enough to prove that the father was a man of extravagant and vicious habits, but there must be some definite connection established between the debt and the expenditure. The pious obligation of a Hindu son to pay his father's debts extends to debts incurred by the father during his minority which, after attaining majority, he agrees to pay. The onus of proving that a decree obtained on a debt contracted by a Hindu father cannot be executed against the entire family property including the son's share on the ground that the debt was non-existent or illegal is on the son. 16 Mad. 99 Foll. (*Abdul Raoof and Moti Sagar*, JJ.) RAM RATTAN *v.* BASANT RAI. **2 Lah 263= 64 I.C. 121=3 Lah. L.J. 563=**

———*Debts—Son's liability—Decree against father.*

To render a son liable for the father's debts, the mere existence of a decree against the father is not an evidence against the son who was not a party to the suit in which the decree was obtained. (*Chevis*, J.) KASTURIMAL *v.* LAJJA RAM. **60 I C. 751.**

———*Debts — Son's liability — Fictitious debt.*

Where a debt is not found to exist, no decree can be passed against the son of the alleged debtor or against the joint family property. (*Tudball and Sulaiman*, JJ.) JHAMMAN LAL *v.* UOMAL SINGH. **57 I.C. 36= 2 P.L.R. 154.**

———*Debts—Son's liability—Father—Execution sale of entire property including son's interest.*

A money decree against a Hindu father when the debt was neither illegal nor immoral and whether he incurred expenses for the family purposes or not, may be enforced in his lifetime by the execution sale of the entire co-parcenary estate and is binding on his son. 39 All. 437 (P.C.) Dist. (*Shadi Lal and Le-Rossignol*, JJ.) AMAR NATH *v.* RUSTOMJI.
15 P.R. 1918=24 P.W.R. 1918= 43 I.C. 678=112 P.L.R. 1918.

HINDU LAW—Debts—Son's liability.

———*Debts—Son's liability.*

A son is as much liable as the father when the latter borrows money for family purposes. (*Shadi Lal*, J.) ANANT RAM *v.* MANSA RAM. **32 I.C. 780=39 P.W.R. 1916.**

——*Debts—Son's liability—Punjab.*

The estate of the minor son which came to him though his father could not be made directly or indirectly liable in respect of claims against his father for monies when the father did not charge the estate in his possession with the payment of those debts. 173 P.L.R. 1912, Foll. (*Reid*, C. J. *and Rattigan*, J.) CHOGHATTA *v.* ASRO MAL. **30 P.R. 1913= 17 I.C. 371=270 P.L.R. 1914.**

———*Debts—Son's liability—Mortgage by father.*

There is a difference between a suit by the son to have an alienation of joint family property by their father declared invalid and a suit by creditors seeking to fix the liability of the father on the son. It is only when a son seeks to avoid liability that he has to prove that the debt incurred by his father was an immoral one. Where the son filed a suit for declaration that a mortgage of ancestral property executed by his father was not for necessity and therefore not binding on him, *held* that the debt though not binding on the son as a mortgage still there was nothing to debar the mortgagee from enforcing the decree which he might obtain against the father for the amount of the loan against ancestral property including the property mortgaged. 53 P.R. 1901; 15 P.R. 1918, followed. (*Broadway and Campbell*, JJ.) HARKISHEN SINGH *v.* LAHORE BANK, LTD. **(1922) M.W.N. 692= 1923 M. 134.**

———*Debts—Son's liability for father's debt—Remedies of creditor.*

So long as a Hindu family remains undivided, a creditor can proceed against the interest of the sons in the ancestral property for the debts of their father which have not been contracted for illegal or immoral purposes. 4 M. 1; 41 M. 136, 140; 38 M. L. J. 402; 39 A. 437; 43 M.L. J. 98 Ref. If the sons after partition in a joint Hindu family effect a *bona fide* partition at a time anterior to the date when their father's debt is contracted, their responsibility is different and the father's creditor cannot then proceed against their divided shares. 22 M. 519; 41 M. 138; 40 M. L. J. 473, Ref. (*Spencer and Devadoss*, JJ.) KURUKUNDI SAMA RAO *v.* FIRM OF MARWADI VANAPPI VAJINJI. **(1922) M.W.N. 708=43 M L J. 745= 32 M.L T. 9=17 L.W. 661=46 M. 64= 1923 M. 36**

———*Debt—Son's liability—Cause of partition being that the father incurs debts.*

The son's share on partition between father and sons, is not liable for the debts contracted by the father before division but not charged

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on the property; the fact that the partition was effected because the father was incurring debts would not affect the *bona fides* of partition. (*Abdur Rahim and Oldfield*, JJ.) KURRI VENKATA REDDI *v.* CHELLURI SURYANARAYANA MURTHI. **40 M L.J. 473= 29 M.L T. 265=(1921) M W N. 261= 62 I.C. 980=13 L.W. 516.**

———*Debt—Son's liability—Ready money debt.*

The son's obligation to pay off his father's debts attaches to an antecedent debt as also to a ready money debt and it can be enforced during the father's life-time by the attachment of the son's share in the joint family property. (*Ayling and Coutts-Trotter*, JJ.) RAJARATNAM CHETTY *v.* ADILAKSHMAMMAL. **62 I.C. 218=28 M.L.T. 278.**

———*Debts—Son's liability—Execution sale.*

A creditor suing a Hindu for his personal debt not tainted by immorality or illegality is entitled to include the sons of the debtor as parties to the suit and to sell the whole ancestral property including the son's share in execution of the decree. The decision in 39 All. 437 (P.C.) has not altered the previous law in this respect. (*Abdur Rahim and Ayling*, JJ.) SUBRAMANIA IYER *v.* SHAW WALLACE & CO. **38 M.L.J. 402=12 L.W. 117= 58 I.C. 648=28 M.L.T. 107.**

———*Debts—Son's liability—Personal debts—Liability of sons—Suit on mortgage—Personal decree against whole ancestral properties.*

In a suit upon a mortgage executed by the father the Court found the mortgage to be not binding as such upon the sons and passed a decree for sale in respect of the father's share of the mortgaged property and declined to pass a decree under O. 34, R. 6, C. P. C. The debt was not proved to be illegal or immoral. *Held*, that the plff. was entitled to a conditional decree for the recovery from the mortgagor personally and from the ancestral properties of himself and his sons of any balance left in case the net proceeds of the sale of the father's share of the mortgaged property was found to be insufficient to pay the amount due to him. The decision in I.L.R. 39 All. 437 (P.C.) alters the law as to the pious obligation of a Hindu son even during his father's lifetime for a debt of the latter which is not immoral or illegal. (*Oldfield and Krishnan*, JJ.) KANDASWAMI GOUNDAN *v.* KUPPA MOOPAN. **43 Mad. 421=38 M.L.J. 208= 11 L.W. 221=(1920) M.W.N. 181= 55 I.C. 320=27 M.L.T. 96.**

———*Debts—Son's liability—Sale of family property in execution of money decree—Son's suit to recover his share.*

A Hindu suing to recover his share of family property sold in execution of a decree obtained against his father is bound to show that the debt for which the property was sold was not binding on him because it was contracted for

illegal or immoral purposes or because it was contracted merely to enable the father to sell all the son's properties. In the absence of such proof by him his suit must fail. (*Spencer and Krishnan*, JJ.) SUBBA RAO *v.* SWAMIA PILLAI. **47 I.C. 834=7 L.W. 407.**

———*Debts—Son's liability — Alienation—Set aside by son—Consideration—Liability to pay.*

Where a sale by a Hindu father is set aside in a suit by the sons on the ground that it is not for binding family purposes, the purchaser cannot treat the consideration which he seeks to get refunded as a debt of the father which it is the pious duty of the sons to repay. 22 Mad. 312, Foll.; 39 All. 437; 41 Mad. 136, Dist. (*Abdur Rahim and Napier*, JJ.) KILLARU KOTAYYA *v.* PALAVARAPPU DURGAYYA. **47 I.C. 192=35 M.L.J. 461.**

———*Debts—Son's liability—Promissory note executed by father after partition in renewal of a note executed before—Pious obligation of son.*

A Hindu son cannot be made liable during his father's lifetime on a promissory note executed by his father after partition in renewal of a note executed by him before partition. The decision in *Sahu Ram Chandra* v. *Bhup Singh*, 44 I. A. 126 does not overrule the right of a creditor of a Hindu father whose debt has not been incurred for an illegal or immoral purpose to join the father and his sons in a suit on the debt and to bring to sale in execution of the decree in such suit the interest both of the father and his sons in the joint family property. Per *Kumaraswamy Sastri*, J.—It is the primary duty of the father to pay debts incurred by him not for any family necessity but for his own purposes. The pious duty of the son only arises when the assets of the father are insufficient assuming that it arises at all during the life-time of the father. In other words, the pious duty is limited to the debts which the father is unable to satisfy out of his share or his self-acquired properties. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) PEDA VENKANNA *v.* SREENIVASA DEEKSHITULU. **41 Mad. 136=33 M.L.J. 519=22 M.L.T. 334=6 L.W. 649=43 I.C. 225=(1918) M.W.N. 55.**

———*Debts—Son's liability—Extent of.*

A son is not jointly bound with the father to pay the debts of the latter. During lifetime of father the son cannot be sued apart from the father. The son's liabitity lasts only so long as the father's liability subsists and if the latter is at an end, the pious obligation of the son also ceases. *Quære*:—On the insolvency of the father does the power of the father to sell the share of the son for his debts vest in the official assignee. (*Ayling and Srinivasa Aiyengar*, JJ.) NARAYANA CHETTIAR *v.* VEERAPPA CHETTIAR. **40 Mad. 581=20 M.L.T. 318=(1916) 2 M.W.N. 271=4 L.W. 422=35 I.C. 918=31 M.L.J. 386.**

———*Debts — Son's liability—Promissory note—Onus.*

To make the sons liable on a promissory note executed by their father who was a member of joint Hindu family with the sons, it is sufficient to join the sons in the suit on the pronote and give them an opportunity of showing circumstances which would prevent the debt being binding on them or a decree being passed against them. It is not necessary to plead and prove that the debt was incurred by the father for purposes binding on the family where the plea of want of consideration is raised the onus of proof in the case of sons is not different from that in the case of their father. 27 M.L.J. 595; 23 Mad. 597; 30 Mad. 88, Ref. (*Wallis*, C.J. *and Hannay*, J.) NACHIAPPA CHETTY *v.* DAKSHINAMURTHY. **17 M.L.T. 232=28 I.C. 315=(1915) M.W.N. 217.**

———*Debts—Son's liability—Suit—Whether should be against one or all sons—Form of decree.*

The creditor is not bound to sue all the sons for the debt of the deceased Hindu father. Even in a suit against one son for a proportionate portion of the debt, it was held that the decree should be for the whole amount of the debt to the extent of that son's share in the joint family property. (*Miller*, J.) SALEM TOWN BANK *v.* RAMASWAMY IYER. **26 I.C. 362=27 M.L.J. 276.**

———*Debts—Son's liability — Mesne profits.*

A decree was passed against the father only in a suit against him and his sons for mesne profits. On attachment in execution of that decree the son objected that his share is not liable to attachment as he was not a party to the decree. *Held*, the son was bound to pay his father's debts under religious and moral considerations and the decree against the father alone made no difference in his position. (*Ayling and Napier*, JJ.) ZENAMANDRA PAPIAH *v.* LANKA SUBBA SASTRULU. **(1914) M.W.N. 616=25 I.C. 396=27 M.L.J. 276.**

———*Debts—Son's liability—Liability of co-parceners—Onus.*

Essential difference between the liability of sons and liability of co-parceners lies in the onus which is on the sons on the one case, to prove the illegal and immoral nature of the debt and on the creditor to prove necessity on the other. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA AVALAPPA NAICKER *v.* MURUGAPPA CHETTIAR. **36 Mad. 328=18 I.C. 49=23 M.L.J. 658=12 M.L.T. 571=(1913) M.W.N. 86.**

———*Debt—Son's liability—Mortgage—Personal remedy barred.*

The fact that the personal remedy against the judgment-debtor in a mortgage decree was barred does not extinguish the debt; therefore if the interest of a son was sold to satisfy such a debt, it must be held that it was for an

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antecedent debt and the son would be bound. 15 Cal. 717; 17 Cal. 584, Foll.; 29 Mad. 200 and 16 M.L.J. 62, Ref. (*Benson and Miller*, JJ.) MUTHUSAMI CHETTIAR *v.* SUBRAMANIA IYER. **11 M.L.T. 142=14 I.C. 69=(1912) M.W.N. 453.**

———*Debts—Son's liability—Legal representative of son.*

Where a simple money decree is obtained against the father, and on his death, his sons are brought on record as his legal representatives, the execution proceedings are binding on the sons. 7 Mad. 255; 32 Mad. 429, Expl. (*Wallis and Sankaran Nair*, JJ.) BHAGAVATULU *v.* KELESWARAPPA VENKATA. **(1911) 1 M.W.N. 198=9 I.C 648=9 M.L.T. 481.**

———*Debts—Son's liability—Decree against father when can be reopened.*

If in regard to an admitted or proved existing debt of their fathers the sons are only entitled to plead that it was illegal or immoral, it must be admitted that they are also entitled to plead that there was no debt of their fathers existing at the time at all, and there is no difference between that and the plea that there was no debt of their father existing at the time which was of such a nature as to justify an alienation of their shares for its satisfaction. (*Hallifax* A.J.C.). ARJUN *v.* CHHAGAN LAL **6 N.L.J. 185=1923 Nag. 300.**

———*Debts—Son's liability—Father's surety debts.*

Under the Hindu Law sons are liable to pay their father's debts incurred by him as a surety for the re-payment of money lent. Case-law examined. (*Hallifax*, A.J.C.) MAYARAM *v.* BHAIRON PRASAD. **19 N.L.R. 29=1923 Nag. 115 (2).**

———*Debts—Son's liability—Pious obligation.*

The pious obligation to pay father's debts will not justify a decision binding the son with it during the father's lifetime if the debt is neither antecedent nor for necessity. (*Macnair*, A.J.C.) PARASRAM *v.* LAKSHMICHAND. **57 I.C. 578.**

———*Debts—Son's liability—Extent of.*

It is the primary duty of a Hindu father to pay debts incurred by him not for any family, but for his own purposes and the pious duty of a son if it arises at all only arises if the father's share or his self-acquisitions are insufficient to meet the debts. (*Findlay*, A.J.C. NANHUSAO *v.* GANPATI. **53 I.C. 231.**

———*Debts—Son's liability—Sons' right to challenge decree against father.*

Where the sons bring a suit for a declaration that a foreclosure decree passed against their father is not binding on them on the ground they were not made parties to the foreclosure suit and it is not shown that the mortgage debt was either illegal or immoral, the sons' suit is not sustainable. The mere fact that in the foreclosure suit the father was not described as the manager of the joint family did not make the decree any the less binding on his sons, in the absence of proof that the father acted in a way prejudicial to the interests of the family. (*Kanhaiya Lal*, J.C.) BHAGWATI PRASAD *v.* KALLU RAM. **25 O.C. 256=1923 Oudh 54.**

———*Debts—Son's liability—Pious obligation.*

Under the Hindu Law, subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of the sons for the debts of the father unless the debts are taken for illegal or immoral purposes. There is a pious obligation on the sons to pay such debts. The obligation is only contingent during the father's lifetime, the father may discharge the same in his lifetime or there may be ample personal estate of the father available out of which the debts might be discharged or no joint family property left from which their satisfaction might be possible. It makes no difference in principle whether the property passed out by foreclosure or sale. (*Kanhaiya Lal*, J.C.) BINDESHARI SINGH *v.* AUDESH PRASAD SINGH. **25 O.C. 16=1922 Oudh 85.**

———*Debts—Son's liability — Mortgage — Personal remedy.*

In the absence of proof of necessity the sons of a Hindu are not liable for a mortgage debt contracted by their father. The remedy of the creditor on the basis of the pious obligation of the sons is not co-extensive with his remedy on a binding security. Where the sons are sought to be made liable on the personal obligation contained in the mortgage executed by their father, the suit must be brought within six years from the due date under the bond. 31 A. 176, Foll; 39 A. 437, Ref. (*Lindsay*, J.C.) RAM CHHATTAR *v.* RAM LAL. **65 I.C. 950=24 O.C. 395.**

———*Debts—Son's liability—Joint or separate status of the family.*

The question as to the pious obligation of the son to pay a debt does not depend upon whether the son was separate or joint with the father. That question is based on religious considerations. Nor is the pious obligation concerned with the question whether the debts are secured or unsecured but is concerned only with the question whether the debt is lawful or incurred for unlawful or immoral purposes. (*Daniels and Wazir Hassan*, A.J.Cs.) RAM SARAN *v.* MANGAL. **8 O.L.J. 87=23 O.C. 327=60 I.C. 219=2 U.P.L.R. (J.C.) 191.**

———*Debts—Son's liability — Pious obligation.*

The son cannot recover the property lost by his father either by voluntary or involuntary sale for antecedent debts unless he shows that the debt was taken for immoral purposes or was of such character that he was not in any

contingency bound to discharge. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BHARATH SINGH *v.* SARSUTI SINGH. **23 O.C. 244=60 I.C. 137=7 O.L.J. 459.**

——*—Debts—Son's liability — Father alive.*

Son's liability to pay the father's debt during father's lifetime though contingent may still be binding on the son so as to justify alienation by compromise by the father. (*Kanhaiya Lal*, A.J.C.) HARI HAR DATTA *v.* MATHURA PRASAD. **7 O L J 467=57 I.C. 599=2 U.P.L.R. (J. C.) 143.**

——*—Debts—Son's liability—Pious obligation.*

Where an alienation by a Hindu father is questioned by his sons during his life there is no pious obligation on the sons to pay the debt. 39 All. 437 (P.C.), Foll. (*Stuart and Kanhaiya Lal*, JJ.) JAI NARAYAN *v.* RAJRANG BAHADUR SINGH. **48 I.C. 914=6 O.L.J. 691.**

——*Debts—Son's liability—Pious obligation of sons—Liability debtor's share.*

So long as the father in a Hindu family is alive the pious obligation to discharge his debts which is imposed by the Hindu Law upon his sons cannot be enforced. Under a decree against any individual co-parcener for his separate debt, a creditor may during the life of the debtor seize and sell his undivided share in the family property. (*Lindsay*, J.C.) MANNA LAL *v.* BHAGWAN DIN. **47 I.C. 679=5 O.L.J. 447.**

——*—Debts—Son's liability — Execution of decree.*

Where the debt was not incurred for the benefit of the family it is only the father's share of the joint property that can be sold in execution of a personal decree against the father while he is alive. 39 All. 437 (P.C.), Cons. (*Stuart and Kanhaiya Lal*, A.J.C.s) BHARATH SINGH *v.* PRAG SINGH. **20 O.C. 311=43 I.C. 291=5 O.L.J. 9.**

——*—Debts—Son's liability.*

As son is not liable for money taken at time of the alienation and so forming part and parcel of that transaction. 29 Mad. 200; 31 All. 176; 14 O.C. 299, Ref. In order to exempt himself from liability the son must show that debt never existed or that it was contracted for illegal or immoral purposes. 1 I.A. 321; 35 Cal. 148: 13 Cal. 21 (35) (P.C.), Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHATAWAR SINGH *v.* RAM SINGH. **36 I.C 41=3 O.L.J. 289.**

——*—Debts—Son's liability—Barred-debts.*

A promise to pay a barred debt is neither illegal nor immoral and is therefore binding on the sons. But it is not binding on the other co-parceners because it is not for the family benefit. 31 A. 171; 8 A.L.J. 649; 6 Mad. 293, Ref. (*Lindsay* J.C. *and Kanhaiya Lal*, A. J.C.) HARI HAR BAKSH SINGH *v* BHARAT PRASAD. **20 I.C. 590=16 O.C. 185.**

——*—Debts—Son's liability—Extent of.*

A mortgage by father not for necessity nor for immoral purposes is binding on the sons as well. 13 Cal. 21; 24 All. 129; 106 Cal. 360; 34 Cal. 184, Ref. (*Tudball and Evans*, A.J.Cs.) JAI RAM *v.* SHEOSHANKAR BAKSH. **9 I.C. 406.**

——*—Debts—Son's liability during father's life-time.*

Where the debts incurred by a Hindu father were not incurred for legal and justifying necessities of the joint family or for the benefits of the defendants Nos. 3 and 4 (his sons) and it is also not found that the debts were incurred for immoral purposes, the minor sons of the father are bound to satisfy their father's debt on the theory of the pious obligation of the sons to pay their father's debt. The Court should accordingly make a decree against the defendants Nos. 3 and 4 and limit their liability to the extent of the co-parcenary property of the joint family. (*Kulwant Sahay and Foster*, JJ.) DEBENDRA KUMAR *v*, FYZABAD BANK, LTD. **4 P.L.T. 516=1924 P. 94.**

——*—Debts—Son's liability—Ancestral or self-acquired property.*

The onus or proof of immorality or illegality as affecting the debt incurred by the father is upon the sons, for after the death of their father their liability to pay the father's debt arises under the express text of the Mitakshara on the ground of their pious obligation to save their fathers from the region of torment or hell. The sons, are, therefore, bound to pay the decree debt of their father under the Hindu Law. Their liability is a personal one, and it is not barred up to six years from the date of the decree. The rule of Hindu Law is that where a son or a guardian takes ancestral property by survivorship, he is bound to pay out of such property all debts of his ancestor not incurred for immoral or illegal purposes including the judgment-debtor. (*Jwala Prasad and Adami*, JJ.) SHEIKH KAROO *v.* RAMESHWAR SAO. **3 P.L.T. 43=1923 P. 143.**

——*—Debts — Son's liability — Personal decree—Separate property.*

A son in his representative capacity is liable for the debts of his deceased father only to the extent of the assets of the co-parcenary property held by him, even if a person obtains a personal decree against the son for recovery of such debts, the decree must be construed in the light of S. 52 of the Civ. Pro. Code, and the decree-holder should not be allowed to proceed against the separate property of the son. (*Jwala Prasad and Ross*, JJ.) BHUJAWAN PRASAD SINGH *v* RAM NARAYAN. **65 I.C. 225 (1).**

——*—Debts—Son's liability.*

A Hindu son is bound by a charge on ancestral property created by his father before his birth. (*Coutts and Ross*, JJ.) RAMCHANDRA PRASAD *v.* MAHABIR PRASAD SINGH. **64 I.C. 247.**

HINDU LAW—Debts—Son's liability.

———*Debts—Son' liability—Liability personal.*

The son's liability to pay off his father's debts is personal irrespective of any ancestral or self-acquired property of his father in his hands. Where a son or grandson takes ancestral property by survivorship, he must pay all debts, those incurred for immoral and illegal purposes excepted, including judgment-debt, and the burden of proving illegality or immorality lies on the son or grandson. (*Jwala Prasad and Adami*, JJ.) KEROO *v.* RAMESHWAR SAO. **62 I . 905=6 P.L.J. 451.**

———*Debts—Son's liability.*

Where a Hindu father contracted a debt to help a relative expecting to get back the money and some benefit out of it, the son is liable to pay the debt. (*Roe and Coutts*, JJ.) BARAIK RADHA NATH SINGH *v.* THAKUR DEVENDRA NATH SAHI DEO. **52 I.C. 681= 1919 Pat. 278.**

———*Debts—Son's liability—Mortgage by father.*

A mortgage by the head of the family as Karta of joint family property for the benefit of the family affects the shares of all members of the family. If the mortgagor uses the words "My share" it includes the shares of his sons and grandsons who are subordinate to him. (*Roe and Jwala Prasad*, JJ.) DEODHARI SINGH *v.* BHUPUARNI SINGH. **42 I.C. 456= 3 P.L.W. 1.**

———*Debts — Son's liability — Father's debts—Suit for, recovery of, against father and his sons.*

In a suit against a Hindu father and his undivided sons for the recovery of debts contracted by the father alone the plaintiff's claim would stand unless the sons prove that the debts were contracted for immoral or illegal purposes. The amount borrowed may or may not have been spent for the benefit of the sons. 22 Mad. 49, Foll. (*Mullick and Jwala Prasad*, JJ.) NATHUNI SINGH *v.* BAIJNATH PRASAD. **2 Pat. L.J. 212=39 I.C. 382= 1. P.L.W. 300.**

———*Debts—Son's liability—Not affected by want of necessity or of consent of adult son.*

The liability of a son to pay his father's debt is not affected by the absence of the son's consent though a major at the time or of family necessity; it arises from moral and religious duty. (*Chapman and Atkinson*, JJ.) BHAGAT SASHU *v.* ABDUL KARIM. **1 Pat. L J. 86= 34 I.C. 23=2 Pat. L.W. 430.**

Debts—Trade.

———*Debts — Trade — Business purposes—Necessity—Proof of.*

Where the manager of a joint Hindu family mortgages a joint estate, it must be still incumbent on the parties supporting the mortgage to prove that the money raised on the mortgage was required for family purposes. No doubt if the family is carrying on a trading business, it would be very much easier to prove that the money was required for the purposes of that trade, and so for family purposes, than if the family were mere agriculturists. (*Macleod*, C.J. *and Crump*, J.) VITHAL YESHWANT *v.* SHIVAPPA MALLAPPA. **47 Bom. 637=25 Bom. L R. 323= 1923 Bom. 265 (2).**

HINDU LAW—Debts—Trade.

———*Debts — Trade — Debt by manager—Liability of minors.*

A joint family which carries on a trade handed down from ancestors becomes a trading family, and in such a case, the minor members are liable for the debts contracted by the managing member for the purposes of the trade or purposes incidental to it. (*Scott-Smith and Leslie-Jones*, JJ.) DAYAL SINGH *v.* BAHAL SINGH. **60 I.C. 610.**

———*Debts—Trade—Minor's liability.*

A minor co-parcener during minority is only liable to the extent of his interest in property. After majority too, his share is liable. Rights and liabilities of a joint family firm must be considered with regard to general rules of Hindu Law also. So death of one co-parcener does not dissolve the partnership. (*Rattigan, Shah Din and Le-Rossignol*, JJ.) GOKUL CHAND *v.* HUKAM CHAND NATHUMAL. **70 and 71 P.R. 1917=109 P.W.R. 1916= 34 I.C. 714=154 P L R. 1916 (F.B.).**

———*Debts— Trade— Debts borrowed by member conducting business — Liability of minor members.*

Where a member of a joint Hindu family who carries on an ancestral business on behalf of the family contracts debts for purposes of the trade, the creditors are entitled to go against the whole of the family property including the shares of the minor members inasmuch as the debt is borrowed for a family purpose. 35 M. 692, distinguished; 5 L. W. 341; 34 Bom. 72; 38 M.L J. 55, Rel. on. (*Spencer and Devadoss*, JJ.) SUBBARAYA MUDALI *v.* THANGAVELU MUDALI. **45 M.L.J. 44=1924 Mad. 33.**

———*Debts — Trade — Liability of co-parceners.*

Co-parceners though not signatories to a pro-note executed for family trade purposes are liable on a promissory note executed by the Manager of a family trade. (1912) M.W.N. 1011, Diss. (*Coutts-Trotter*, J.) AYYASAMI PILLAI *v.* GURUSAMI NAICKEN. **33 I.C. 691=3 L.W. 463.**

———*Debts— Trade— Liability of co-parceners.*

All co-parceners can be sued on a note executed by one member in the family name where a joint family trades under a firm name. (*Kumaraswami Sastri*, J.) VENKATARAMIAH PANTULU *v.* SUBRAMANIAM. **26 I.C. 393=16 M.L.T. 489.**

HINDU LAW—Debts—Trade.

———*—Debts—Trade.*

In a Hindu family carrying on agricultural business, debts contracted by manager or father are binding on other members and their shares in the joint family are bound to satisfy the debts, if the money is spent for family purposes. (*Twomey*, C.J, *Robinson*, *Maung Kin and Rutledge*, JJ.) S.T.S.V. CHETTY *v.* V.N. VADANVETTY. 12 Bur. L.T. 255 = 65 I.C. 711 = 10 L.B.R. 87 (F.B.)

———*Debts—Trade—Liability of minor co-parceners.*

Minor partners of a joint family business are only liable for the debts of the business to the extent of their share in the property of the firm. (*Ormond*, J.) O. A. M. K. CHETTY FIRM *v.* V. K. P. CHETTY FIRM. 31 I.C. 271 = 8 L.B.R. 112.

Debts—Widow.

———*Debts—Widow—Mortgage—Execution—Subrogation.*

A Hindu widow obtained a decree for possession of her husband's estate on payment of a certain sum of money which was spent for the discharge of debts binding on the estate. She raised the money by a mortgage executed in favour of one U. and obtained possession. She had previously executed other mortgages in favour of K and M. U. sued on his mortgage and claimed priority over the mortgages of K and M on the principles of subrogation. *Held*, that the doctrine of subrogation cannot be resorted to by the appellant for the purposes of claiming priority over K and M. (*Piggott and Lindsay*, JJ.) UMARAI LAL *v.* RUKMIN KUAR. 35 I.C. 647 = 14 A.L.J. 963.

———*Debts—Widow—Legal necessity.*

Debts contracted by a widow in possession of her husband's estate to meet the expenses of litigation in defending her life-estate or for protecting the estate are for legal necessity. The lender has only to show there was pressure on the estate and necessity for borrowing for meeting the costs of litigation or that he satisfied himself after reasonable enquiry. (*Chatterjee and Walmsley*, JJ.) STEVENS *v.* JANKI BALHALI. 22 I.C. 305 = 19 C.W.N. 80.

———*—Debts—Widow — Liability of reversioner.*

A reversioner is liable for debts incurred by the widow for payment of her husband's debts unless he proves either that the debt had already been paid or that the widow was deceived into a belief that they were legally recoverable. The reversioner is not liable for money advanced to the widow without reasonable inquiry on the part of the creditor and in the absence of reasonably credited representation of necessity. *Kanhaiya Lal and Sabonadiere*, A.J.Cs.) BHAGWANT SINGH *v.* DAULAT SINGH. 21 I.C. 751 = 16 O.C. 272.

Degradation.

See HINDU LAW—SUCCESSION.

HINDU LAW—Gift.

Devasthan.

See HINDU LAW — RELIGIOUS ENDOWMENT.

Disqualification.

See HINDU LAW—SUCCESSION.

Divorce.

See HINDU LAW—MARRIAGE.

Endowment.

See HINDU LAW—
(1) GIFT.
(2) RELIGIOUS ENDOWMENT.

Exclusion from inheritance.

See HINDU LAW — SUCCESSION—EXCLUSION.

Executor.

See HINDU LAW—WILL.

Factum Valet.

See HINDU LAW—
(1) ADOPTION.
(2) MARRIAGE.

Family Arrangement.

See FAMILY ARRANGEMENT.

Family dwelling-house.

See HINDU LAW—
(1) JOINT FAMILY.
(2) PARTITION.

Family Settlement.

See FAMILY ARRANGEMENT.

Family Trade.

See HINDU LAW—
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY—TRADE.

Female's Estate.

See HINDU LAW—SUCCESSION.

Firm.

See HINDU LAW—FAMILY TRADE.

Gift.

See also HINDU LAW—
(1) ALIENATION.
(2) JOINT FAMILY.
ABSOLUTE ESTATE.
CONSTRUCTION.
CO-PARCENER.
FATHER'S POWER.
FORMALITIES OF.
IDOL.
LIMITATIONS.
LIMITED ESTATE.
LIMITED INTEREST.
MANAGER OF JOINT FAMILY.
WIDOW.

Gift—Absolute Estate.

———*Gift—Absolute estate—Gift by husband to wife—Words empowering alienation.*

Where a Hindu husband makes a gift of land to his wife, he can use words of sufficient amplitude to convey in the terms of the gift itself the fullest rights of ownership including the power to alienate. In such a case it is not necessary that the power to alienate should be given by express declaration. 30 A. 84; 30 M.L.T. 149, Ref. (*Lord Buckmaster*) RAMACHANDRA RAO *v.* RAMACHANDRA RAO.
43 Mad. 320=43 M.L J. 78=
24 Bom. L.R. 963=16 L.W. 1=
(1922) M W.N. 359=20 A L J. 684=
26 C.W.N. 713=30 M.L.T. 154=
38 C L J. 545=L.R. 3 P.C. 158=
49 I.A. 129=1922 P.C. 80 (P.C).

——*Gift—Absolute estate—Gift to female—"Malik"—Repugnant estate.*

A Hindu testator bequeathed the "entire estate" to the deft. subject to conditions of which the 4th provided: 'I have bequeathed Mauza Khudda to Gomi (a foster daughter) after my death she shall be owner in possession (*malik o qabiz*) of the entire Mauza Khudda.' *Held*, that Gomi though a female took an absolute estate in Mauza Khudda the words "malik-o-qabiz" in Cl. 4 meaning "owner in possession" signified a full ownership of property and the other expressions in the will did not alter the absolute estate. Taking the clauses together there was no repugnancy and the general disposition in favour of the deft. was subject to an exception in respect of Mauza Khudda bequeathed to Gomi. 35 I.A. 17, Rel. (*Lord Shaw.*) FATEH CHAND *v.* RUP CHAND. **38 All. 448=43 I.A. 183=**
18 Bom. L.R. 900=20 M.L.T. 481=
21 C.W.N. 102=4 L.W. 597=
(1916) 2 M.W.N. 557=37 I.C. 122=
26 C.L.J. 182 (P.C.).

——*Gift — Absolute estate — Bahamah wajab—Meaning of.*

Held on a construction of the gift that the estate conferred on the widowed daughter-in-law was an absolute estate and that the words "bahamah wajab" occurring in the deed of gift meant "with all rights." (*Stuart*, J.) ABHEY SINGH *v.* HIMTA. **65 I C. 653=**
1923 All. 234 (1).

——*Gift—Absolute estate—Female donee—Malik.*

The words "Malik Mustagil" in respect of property gifted to a woman, in the absence of circumstances indicating that the donee was to take a mere life-estate, conferred an absolute estate. A grant should be constructed in favour of the grantee rather than of the grantor. 30 All. 84, Ref. to. (*Richards*, C.J. *and Banerjee*, J.) NAULAKHI KUAR *v.* JAI KISHEN SINGH.
40 All. 575=46 I.C. 905=16 A.L J. 564.

———*Gift—Absolute estate—Female donee,*

In construing a deed of gift to a Hindu female regard must be had to the contents of

the same on the merits and the intentions of the donor and no presumption should be drawn from the fact of the donee being a female. (*Johnstone and Rattigan*, JJ.) GURMUKH SINGH *v.* MAKHAN SINGH. **61 P.R. 1911=**
11 I.C. 846=147 P.W.R. 1911.

———*Gift—Absolute estate—Females—Presumption.*

Per *Krishnan, J*—The presumption as regards bequests in favour of a Hindu woman being only a life-estate is no longer applicable in this Presidency. (*Spencer and Krishnan*, JJ.) CHIDAMBARA NATHA GOUNDEN *v.* SELLAPPA REDDI. **10 L.W. 620=**
54 I.C. 524=27 M.L.T. 37.

———*Gift — Absolute estate — Females—Nature of estate granted.*

In the case of gifts to Hindu females where there are words indicating that an absolute estate should pass they should be given a liberal interpretation and the estate should not be cut down by reason of any presumption under the Hindu Law. The grant of an absolute estate should be made from the whole tenor of the document. For the grant of an absolute estate to a female it is not necessary that there should be express words giving power of alienation. 2 I.A. 7, Ref.; 22 Mad. 357 and 18 M.L.T. 346, Not foll. (*Spencer and Kumaraswami Sastri*, JJ.) MURAKONDA RAMASWAMI *v.* MURAKONDA LAKSIMI DEVI.
53 I.C. 253=10 L.W. 269.

———*Gift—Absolute estate—Wife—Will.*

Where the husband gives property to his wife and the words of the gift are sufficiently clear there is no presumption that the donee takes only a limited estate. 33 All. 84 (P.C.), Rel. The rule laid down by the Privy Council in 2 I.A. 7 is a rule of construction to be applied only when there is some uncertainty or ambiguity in the language of the instrument of gift. A Hindu gave the residue of his properties to his two wives and adopted son as follows: "Of the remaining property the adopted boy is to be entitled to enjoy one-half. Of the remaining half these two persons my senior wife S. K, and my junior wife S.T. shall each take a half." *Held*, each wife of thesettler took an absolute estate in the fourth share of the properties given to her by the settlement. A widow who acquires property absolutely under a gift or settlement from her husband can dispose of the same by will. 7 Mad. 387 and 14 Mad. 374, Diss.; 30 All. 84 and 38 All. 446, Rel. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMACHANDRA RAO *v.* RAMACHANDRA RAO. **42 Mad. 283=52 I.C. 94=**
36 M.L.J. 306.

———*Gift—Absolute estate — Wife—Maintenance—Nature of estate taken—Presumption.*

A Hindu husband made a gift to his childless wife in these words "I have gifted this day in lieu of maintenance the undermentioned house, with rights of alienation by sale," with "site, watercourses and treasures." *Held*, that

HINDU LAW—Gift—Absolute estate.

the deed conferred an absolute heritable estate on the widow. A gift to a female should not be construed less literally than a gift to a male and the broad proposition that a gift to a Hindu female (especially to a wife or a widow by her husband) should be construed with a prejudice in favour of a life-interest is not deducible from the authorities cited in support thereof. 2 I.A. 7, Expl.; 7 Mad. 387 ; 2 L.W. 887, Diss. ; 17 Bom. 503 ; 17 M.L.J. 622, Dist. (*Sadasiva Aiyar and Spencer*, JJ.) MUTHU VENKATANARAYANA CHETTY *v.* ATHIPANDURANGA NAIDU. **51 I.C. 217 = (1919) M.W.N. 103.**

——*Gift—Absolute estate—Female donee—Restriction on alienation.*

A Hindu father made a gift to his daughter in these terms: "These properties having been gifted to and delivered possession of to you, yourself and your Santhathikal Puthra Paramparayami may enjoy the same without creating any incumbrance, sale, etc." *Held*, that the deed conveyed an absolute estate and that the words were only words of limitation and not of purchase. 10 M.L.T. 203, Foll. The restriction against alienation was a repugnant condition and therefore invalid. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) KANTHAMMAL *v.* MEENAKSHISUNDARAM IYER. **(1917) M.W.N. 867 = 43 I.C. 15 = 7 L.W. 32.**

——*Gift—Absolute estate—Female donee—Construction.*

Gift from "generation to generation" confers absolute estate even on a limited owner. (*Benson and Sundara Iyer*, JJ.) NARASIMMA HEGADATHI *v.* BILLAKESU PUJARI. **31 I.C. 513 = 25 M.L.J. 637.**

——*Gift—Absolute estate—Female donee.*

Where the words of the gift are capable of conferring an absolute estate the mere fact of donee being a female will not derogate from the grant. 22 Mad. 357 ; 31 Mad. 179 ; 35 Cal. 896 (P.C.), Dist. (*White*, C.J. *and Seshagiri Iyer*, J.) GOMMATTAM RAMANUJA IYANGAR *v.* SATAGOPACHAR. **24 I.C. 20 = 27 M.L.J. 329.**

——*Gift—Absolute estate—Female donee.*

Under Hindu Law a grant in favour of a female does not necessarily confer an absolute estate on her. S. 82 of the Succession Act does not apply to such a case. (*Kanhaiya Lal*, A.J.C.) CHAURAS KUNWAR *v.* JAGANNATH SINGH. **7 O.L.J. 147 = 56 I.C. 287 = 2 U.P.L.R. (J.C.) 89.**

——*Gift—Absolute estate — Widow to a married daughter.*

A Court should refuse to declare that the deed of gift by a widow to her married daughter does not prejudice the reversionary right. 11 All. 253, Foll. (*Stuart*, A.J.C.) THAKURDIN SINGH *v.* BHAGWANT KUNRI. **32 I.C. 734 = 2 O.L.J. 629.**

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——*Gift—Absolute estate—Female donee.*

There is no presumption that a Hindu woman, other than a widow, cannot take anything more than a life-interest. (*Sharfuddin and Mullick*, JJ.) JAGANNATHA PRASAD *v.* JAIKISHIN PRASAD. **1 P.L.J. 16 = 34 I.C. 375 = 3 P.L.W. 164.**

Gift—Construction.

——*Gift—Construction* — Bahamah wajab —*Meaning of.*

Held on a construction of the gift that the estate conferred on the widowed daughter-in-law was an absolute estate and that the words "bahamah wajab" occurring in the deed of gift meant "with all rights". (*Stuart*, J.) ABHEY SINGH *v.* HIMT. **1923 A. 234.**

——*Gift—Construction—Bequest to some members of a joint family.*

Where the devisees or donees are only some of the members of a joint Hindu family and there is a clear intention to exclude the remaining members and to confer on the devisees or donees interests to be held, separate from any property which the joint family, might happen to possess, there is no ground for assuming that the devisees or donees were intended to hold the property as co-parceners in the sense of the Hindu Law. (*Chamier and Piggott*, JJ.) PRABHU DYAL *v.* HARICHARAN. **26 I.C. 689.**

——*Gift — Construction — Will — Donee named as adoptee—Gift to donee as a persona designata—Gift not conditional on adoption.*

Where there is absolutely nothing in the will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift, in the absence of anything of the kind, interpreting the language of the gift in its ordinary meaning, the Court must treat it as a gift to donee as a *persona designata* and hold the gift as valid. The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. (*Macleod*, C.J. *and Shah*, J.) BAI DHONDUBHAI *v.* JAVADEKAR. **1922 Bom. 352.**

——*Gift—Construction — Absolute gift—Krishnarpana.*

A gift accompanied by the words Krishnarpana amounts to an absolute and irrevocable gift though the donor was only a trustee of the subject-matter of gift, and the donee was bound by temporary condition that he should pay a trivial sum as Jodi. (*Batchelor and Roe*, JJ.) RANGACHARYA APPACHARYA *v.* SANKHALPACHARYA. **37 Bom. 231 = 19 I.C. 887 = 15 Bom. L.R. 178.**

——*Gift—Construction—Female donee—Annuity*—Putrapautradi Krame—*Effect of.*

A series of life-estates in tail male is repugnant to Hindu Law and Courts will give

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to the expression "*putra pautradi Krame*" occurring in a gift of an annuity to a Hindu lady, its usual technical meaning so that the annuity will be perpetual and on the death of the lady, her son would take an absolute estate. (*Teunon and Newbould*, JJ.) RAJENDRA MOHAN MOULIK *v.* UPENDRA NATH GUHA.
64 I.C. 518.

——— *Gift — Construction — Self-acquired property.*

Under the Mitakshara Law, where gifts are made by a father to several sons, whether they are made *inter vivos* or by will, as a substitute for the partition of the property among them, there is no reason to suppose that the father intended to favour any one son more than any other. The natural supposition is that the sons are intended to take their shares as they would take them on partition after the father's death, that is, as an ancestral property. (*Richardson and Huda*, JJ.) MUKTI PRAKASH NANDE *v.* ISWARI DEI DEBI.
57 I.C. 858 = 24 C.W.N. 938.

———*Gift—Construction.*

Where the expression used was "*jo waste, guzarike digavi*," held these words indicate that there was no intention of making over the lands to her as an absolute gift. 34 A. 234, Dist. (*Scott-Smith and Brasher*, JJ.) MT. MALAN *v.* KISHORE CHAND. **1923 Lah. 17.**

——*Gift—Construction—Bequest to adopted son*—Persona designata.

Where a Hindu widow took a boy in adoption and made a will mentioning the fact of adoption and also made a bequest to the adopted son and recited that she made the will with a view to remove subsequent disputes arising in connection with the management of the family property. It was held that the validity of the adoption was not a condition precedent to the bequest; but the words "adopted son" were only descriptive and in spite of them invalidity of the adoption the devisee could take under the will. (*Shah Din*, C.J. *and Le-Rossignol*, J.) RAMAJI DAS *v.* DURGA PRASAD.
45 I.C. 90 = 6 P.R. 1918.

———*Gift—Construction--Defeasance clause—Effect of—Transferee from donee—Position of.*

A clause in a deed of gift that the donor was to become entitled to the properties gifted on the happening of a specified contingency is not invalid or opposed to Hindu Law. A Hindu who had been sentenced to transportation for life made a gift of his properties to a relation of his subject to a condition that the donee should hand over the properties to the donor in case he returned to his native village after the termination of his sentence. The donee alienated the properties gifted to strangers who had notice of the terms of the gift. The donor subsequently returned and sued for possession. *Held*, that he was entitled to recover the properties from the alienees who could not be said

HINDU LAW—Gift—Co-parcener.

to be *bona fide* purchasers. (*Krishnan and Venkatasubba Rao*, JJ.) VENKATARAMA AIYAR *v.* AIYASAMI AIYAR. **43 M.L.J. 340 = 16 L.W. 852 = (1922) M.W.N. 657 = 31 M.L.T. 465 = 1923 Mad. 67.**

——*Gift—Construction—Charity.*

Where provision is made for a charity by a Hindu the presumption is that it creates a charge on the estate. True test is to whom is the surplus reserved. (*Seshagiri Aiyar and Napier*, JJ.) KATHAN MUTHRIAN *v.* SIVA BAGHIATHAMMAL. **4 L.W. 104 = 36 I.C. 782 = 20 M.L.T. 204.**

———*Gift—Construction— Tenants-in common.*

When a Hindu male owner gives his property to his daughter and son-in-law during their marriage, to be enjoyed by them in common, they take the properties as tenants-in-common and not as joint tenants with right of survivorship. 23 Cal. 620, Foll. (*Ayling and Napier*, JJ.) KAPINI GOWNDAN *v.* SARANGAPANY.
3 L.W. 287 = 34 I.C. 744 = (1916) 1 M.W.N. 288.

———*Gift—Construction*—Aun Santhathi—*Meaning.*

Unless excluded by force of the context, an adopted son is included in the expression 'Aun Santhathi' (male descendant). (*Sankaran Nair and Spencer*, JJ.) BALA SUBRAMANIA PILLAI *v.* PITCHA PILLAI.
33 I.C. 552 = (1916) 1 M.W.N. 306.

———*Gift—Construction—Interpretation of "Santhathi paramparaya"—Son taking as a gift—Character of property.*

The words "*Santhathi paramparaya*" give clear indication of the fact that the annuity created was intended to descend to all heirs of the grantee and not to lineal heirs merely. A son taking an estate from his father as a gift is not free from liability to which he would have been subject had he taken the same as an heir and son (Per *Seshagiri Iyer.*) There is no change in the character of the property if a person is entitled as an heir but instead of taking it one takes it under a will. This principle is applicable in case of *inter vivos* transfers. (*Wallis*, O C.J. *and Seshagiri Aiyar*, J.) RAJARAJESWARA DORAI *v.* V. SUNDARAPANDIYASWAMI. **27 I.C 283 = 27 M.L.J. 694.**

Gift—Co-parcener.

———*Gift — Co-parcener—Performance of ceremony.*

Gift of joint family property to a co-parcener by other members, for performing the shradha of a deceased sonless member is valid. It is really supported by consideration. 19 M.L.J. 62; 34 Mad. 422, Ref. (*Seshagiri Iyer and Phillips*, JJ.) BAGIRATHI AMMAL *v.* BAGIRATHI AMMAL. **25 M.L.T. 353 = 50 I.C. 597 = (1919) M.W.N. 350.**

HINDU LAW—Gift—Co-parcener.

———*Gift—Co-parcener — Validity—Right of sons.*

A gift by a member of a joint Hindu family of some immoveable property, to his daughter which was reasonable as compared to his share in all the joint family properties, and which was not impeached by his undivided son during his lifetime cannot be impeached by the son or the grandson after the donor's death. (*Sankaran Nair and Oldfield*, JJ.) NARAYANA *v.* RAMALINGA. **36 I.C. 428=39 Mad. 587.**

———*Gift—Co-parcener.*

Gift by one co-parcener to another of his share of the property other than a surrender is bad. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHTWAR SINGH *v.* RAM SINGH. **36 I.C. 41=3 O L.J. 289.**

Gift—Father's power.

———*Gift—Father's power—Gift in favour of daughter.*

According to Mitakshara a Hindu father has the power of making within reasonable limits, gifts of moveable property to a daughter. What is reasonable in the circumstances is a question of fact. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. **45 Mad. 489=43 M.L J. 428= (1922) M.W N. 399=26 C.W.N 929= 16 L.W. 639=20 A.L.J. 839= 24 Bom. L.R. 1209=30 M.L.T. 255= 49 I.A. 168=1922 P.C. 201 (P.C.).**

———*Gift—Father's power—Testamentary gift.*

Whatever power the Karta of a joint Hindu family may have of making a gift *inter vivos* he has no power to make a bequest of any portion of the joint family property to take effect after his death. 8 M. H.C.R. 6; 5 Cal. 149; 16 Mad. 353; 5 Bom. 48, Foll. (*Mears*, C.J. *Banerjee and Piggott*, JJ.) LALTA PRASAD *v.* SHEAM SINGH. **42 All. 461= 18 A.L.J. 503=58 I.C. 667= 2 U.P.L.R. (All.) 137.**

———*Gift—Father's power.*

Gift by father on his own behalf and on behalf of his minor son is voidable at the instance of minor son. (*Griffin and Ryves*, JJ.) SHEO GULAM *v.* BADRO NARAYAN LAL. **19 I.C 560=11 A.L J 798.**

———*Gift—Father's power—Ancestral property in favour of female members of the family Will—Consent of adult sons—Minors, if bound.*

In a joint Hindu family the father with the consent of his adult sons and with the consent of relations who are interested in his minor sons, can make a fair and reasonable provision by will in favour of the female members of his family. 35 All. 337 (P.C.); 35 Mad. 628; 17 M. L. J. 528; 27 M. L. J. 485, Foll. (*Sadasiva Aiyar and Spencer*, JJ.) APPANA PATRACHARIAR *v.* SRINIVASA CHARIAR. **40 Mad. 1122=32 M.L J. 364=5 L W. 514= 21 M L.T. 403=40 I C. 118= (1917) M.W.N. 355.**
[*See* contra 43 Mad. 824]

HINDU LAW—Gift—Formalities of.

———*Gift—Father's power.*

A gift to the daughter of an undivided brother, is, if reasonable, binding on the donor's son. (*Sundara Aiyar and Spencer*, JJ.) PUGALIA VETTORAMMAL *v.* VETTOR GOUNDAN. **(1912) M.W.N. 89=11 M.L.T. 103= 13 I.C. 475=22 M.L.J. 321.**

———*Gift—Father's power—Daughter.*

A gift of 8 acres of ancestral land by a Hindu father to his daughter after marriage when the family was possessed of 200 acres of land is valid. 37 Cal. 30; 30 Mad. 452; 22 Mad. 113, Dist. (*Munro and Sankaran Nair*, JJ.) ANIVILLA SUNDARAMAYYA *v.* CHERLALA SITAMMA. **35 Mad. 628=21 M.L J. 695= 9 M.L T. 469=10 I.C. 56= (1911) 1 M.W.N. 422.**

———*Gift—Father's power — After born son.*

Gift of ancestral property by father does not bind an after born son (conceived on date of gift) and the subsequent death of the son does not cure the invalidity. (*Kanhaiya Lal and Kendal*, A. J. Cs.) JAGJIWAN BAKHSH SINGH *v.* PATRAJ KUAR. **38 I.C. 449=3 O.L J. 741.**

Gift—Formalities of.

———*Gift--Formalities—Delivery of possession if necessary.*

Under the Hindu Law, delivery of possession of immoveable property is not essential to the validity of a gift thereof. 17 A. 169; 25 A. 358, Foll.) (*Ryves and Gokul Prasad*, JJ.) DEBI SINGH *v.* BANSIDAR. **1922 All. 44.**

———*Gift—Formalities—Delivery of possession.*

Before the T.P. Act came into force a gift could be validly made by an oral transfer followed by delivery of possession. 11 Cal. 121, Foll. (*Mookerjee and Buckland*, JJ.) JAGANNATH MARWARI *v.* CHANDNI BIBI. **26 C.W.N. 65=67 I.C. 31=34 C L J. 432.**

———*Gift—Formalities of—Donee already in possession—Joint holding.*

When the donee is already in possession along with the donor of a joint holding, a gift of a share therein is valid without actually dividing off the gifted portion. (*Shadi Lal*, J.) HIRA SINGH *v.* JHANDA SINGH. **106 P.L R. 1917= 42 I.C. 371=80 P.W.R. 1917.**

———*Gift — Formalities of—Possession, delivery of—Donor in loco parentis—Gift to minor and adult together.*

If a donor stands in *loco parentis* to the donee whose parents are living actual possession of the property gifted need not be given to the donee. The donor can accept the gift on behalf of the donee. But where a joint gift is made to a minor and an adult, the donor in *loco parentis* of the minor cannot accept the gift even to the extent of the minor's share. (*Abdul Rahim and Seshagiri Iyer*, JJ.) SABJAN SAHIB *v.* ABDUL AZEEZ SAHIB. **42 I.C. 684.**

HINDU LAW—Gift—Formalities of.

——*Gift—Formalities of—Acceptance.*

A gift which is not accepted can be revoked. (*Dalal*, A. J. C.). NANHUN *v.* RAM DAYAL.
74 I C. 818=9 O. & A.L.R. 460.

——*Gift—Formalities of—Oral gift—Proof of.*

The onus of proving an oral gift is upon the person setting it up. (*Das and Adami*, JJ.) RAMESHWAR NARAIN SINGH *v.* RIKNATH KOERI. **1923 P. 165.**

Gift—Idol.

——*Gift—Idol—Not in existence—Validity.*

A gift in favour of an idol not in existence at the time of the gift is invalid. (*Richards*, C. J. *and Banerjee*, J.) PHUNDAN LAL *v.* SRIMATI ARYA PRITINEDHI SABHA.
33 All. 793=11 I.C. 260=8 A.L.J. 914.

——*Gift—Idol—Nature of gift.*

A gift to a Swami for the purposes of an idol vests the property in the Swami and his successors as trustees with the idol as the beneficiary. (*Bachelor and Rao*, JJ.) RANGA CHARYA APPACHARYA *v.* DASA CHARYA SANKHALPA CHARYA. **37 Bom. 231=19 I.C. 387=15 Bom. L.R. 178.**

Gift—Limitations.

——*Gift—Limitations.*

A gift over on an indefinite failure of male issue in the donor's line is void. (*Mr. Ameer Ali*) PURNA SAHI *v.* KALIDHAN PAL.
38 Cal. 603=15 C.W.N. 693=8 A.L.J. 681=13 Bom L.R. 431=14 C.L.J. 1=(1911) 2 M.W.N. 403=10 M.L.T. 361=11 I.C. 412=21 M.L.J. 1119 (P.C.).

——*Gift—Limitations—Unborn person—Validity—Creation of annuity.*

A grant of an annuity is a right of property and as it is an incorporeal right, the test of validity in each case is, whether, under the circumstances, the donor has sufficiently indicated an intention that the transfer should take effect as a corrody and with that intention has done all that is practicable by way of transferring such indicia of property as may be in existence. If there is such a transfer there is no room for the application of the rule in the *Tagore case* as to the invalidity of a gift to an unborn person. 13 C.L.J. 85; 39 C. 87, Ref. (*Mookerjee and Chotzner*, JJ.) JATINDRA MOHAN MONDAL *v.* GHANASHYAM CHOWDHURY. **36 C.L.J. 428=50 C. 266=1923 Cal. 27.**

——*Gift—Limitations—Defeasance.*

Defeasance by way of gift over must be in favour of somebody in existence at the time of the gift. (*Reid and Clark*, JJ.) KALLU MAL *v.* CHAHINDI. **36 I.C. 222=97 P.L.R. 1916.**

——*Gift—Limitations—Unborn persons—Invalid.*

The creation of a future interest in immoveable property in favour of persons unborn is contrary to Hindu Law. (*Sankaran Nair and Spencer*, JJ.) VENKATAPPA. NAYANIM VARU *v.* THIMMA NAYANIM VARU.
(1914) M.W.N. 900=27 I.C. 379=27 M.L.J. 656.

HINDU LAW—Gift—Limited estate.

——*Gift—Limitations—Gift subject to mortgage—Donee cannot impeach mortgage for want of legal necessity.*

A donee of joint family property subject to an antecedent mortgage cannot question the necessity or propriety of the mortgage. 11 N.L.R. 1, Ref. (*Prideaux*, A.J.C.) NARAYAN *v.* SHANKAR LAL. **1923 Nag. 127.**

Gift—Limited Estate.

——*Gift—Limited estate—Gift for maintenance to Hindu widow.*

A gift of land for the maintenance of a childless Hindu widow confers only a life estate and very strong evidence must be produced to prove that the gift to a childless widow was intended to create an absolute interest. (*Fletcher and Smither*, JJ.) GANENDRA NATH SANYAL *v.* MOHENDRA MOHINI DEBYA.
42 I.C. 884.

——*Gift—Limited estate—T. P. Act, S. 8—Wife.*

A gift by a Hindu in favour of his wife for her maintenance and performance of *debshiba* without words of inheritance or empowering alienation usually contained in deeds of absolute gift is a gift only for life of the donee. 2 I.A. 8; 11 Cal. 121 (P.C.), Ref. The remainder remains in the donor and is descendible to and transferable by his heirs. (*Chatterjea and Beachcroft*, JJ.) PRIYAMBADA DASI *v.* RAM GOPAL GHOSA. **27 I.C. 407.**

——*Gift—Limited estate—Gift to wife—Construction.*

A gift by husband to his wife is stridhanam in so far as it passes to her heirs. But she does not take an absolute estate in it. (*Reid, and Clark*, JJ.) KALLU MAL *v.* CHAHINDI.
36 I.C. 222=97 P.L.R. 1916.

——*Gift—Limited estate—Gift by widow.*

A gift by a Hindu widow of property in which she has only a life interest passes nothing to the donee beyond her life interest notwithstanding words of alienation contained in the gift deed. The onus of proving that an ablsoute estate passed by the gift of a Hindu widow lies on those asserting it. (*Coutts Trotter and Seshagiri Iyer*, JJ.) VEERAKKAL *v.* THIRUMAKKAL. **34 I.C. 896.**

——*Gift — Limited estate — Wife — Gift with all rights.*

Where a certain deed of gift executed by a Hindu husband in favour of his wife soon after his marriage with her provided that the donee and her children should enjoy the properties with all rights (*Sarwa Swathanthrathudan*). *Held*, that the above words did not convey an

HINDU LAW—Gift—Limited estate.

absolute estate to the wife. (*Ayling and Tyabji*, JJ.) MANIKA MUDALI *v.* MUTHACHI GOUNDAN. **18 M.L.T. 346=30 I.C. 685=2 L.W. 887.**

———*Gift—Limited estate.*

The rule in Tagore's case that a gift to a man, his sons, and grandsons passes a general estate of inheritance, has no application where the words in the deed expressly or impliedly limit the right. When different words are used to convey an absolute interest and a partial interest and where the donee is himself 70 years old the intention can be inferred to be to give a life-estate and not an estate of inheritance. 18 W.R. 359 (P.C.); 7 Cal. 304 (P.C.); 24 Cal. 834, Dist.; 28 Cal. 720. Foll. (*Oldfield and Tyabji*, JJ.) SEETHAI AMMAL *v.* MAHADEVA IYER. **25 I.C. 936.**

———*Gift—Limited estate—Widow—Gift to.*

There is no presumption that a gift by a man to his widowed daughters is only gift of a life-estate. (*Sadasiva Iyer and Seshagiri Iyer*, JJ.) BODY MUTTAYYA *v.* KAVAORI KODANDA RAMAYYA. **23 I.C. 594=(1914) M.W.N. 387.**

———*Gift—Limited estate—Woman's estate—Rights of grantee.*

The Hindu Law permits the creation of a woman's estate in favour of a female by contract of parties as well as by a grant inasmuch as she can obtain it by inheritance. A member of an undivided Hindu family can grant to his deceased brother's widow the share of her husband which the latter would have got on partition. The female will hold such an estate by the grantee as the ordinary widow's estate and it will be regarded as one given her in lieu of the maintenance and on her death, the property will pass to her husband's heir. (*Benson and Sundara Iyer*, JJ.) MEDA VENGAMMA *v.* MITTA CHELANIAH. **36 Mad. 484=23 M.L.J. 168=15 I.C. 17=12 M.L.T. 293**

———*Gift—Limited estate.*

Gift by a Hindu male to a female should *prima facie* be taken to confer life-estate only. *Held* that the deed in question conveyed very limited powers to the donees for the lifetime of the executant and declared them as his heirs after his death in accordance with the ordinary rules of succession. (*Chapman and Roe*, JJ.) MUSSAMMAT SASIMAN CHOWDHARANI *v* SIBNARIAN CHAUDHURY. **39 I.C. 755=1 P.L.W. 375.**

Gift—Limited Interest.

———*Gift—Limited interest—Donee.*

There is no presumption of law in favour of an estate conveyed to a Hindu widow being a limited one, 61 P.R. 1911, Foll. (*Broadway*, J.) TULSI RAM *v.* MUSSAMMAT JAI DEVI. **53 P.L.R. 1919.**

———*Gift—Limited interest—Daughter.*

There is no presumption of Hindu Law that a gift to a daughter is of an absolute estate.

HINDU LAW—Gift—Manager of joint family.

Held, on the construction of the will in question that the daughter's children took the reversion after the death of the daughter. (*Abdur Rahim and Oldfield*, JJ.) SESHACHARLU *v.* SHESHAMA. **47 I.C. 758=34 M.L.J. 479.**

———*Gift—Limited interest—Widow—Nature of estate—Presumption.*

Where a widow takes property from her husband under a document not produced, and there is no evidence as to the terms of the document that the presumption is that widow had only a life-estate in the property. (*Sankaran Nair and Oldfield*, JJ.) NATARAJA SARMA *v.* RAMBHADRA NAIDU GARU. **28 I.C. 853.**

———*Gift—Limited interest—Widow.*

In the absence of words of limitation gifts to women in Hindu Law, with the exception of a widow, must be presumed to transfer an absolute interest unless there is something repugnant in the context. (*Sharfuddin and Mullick*, JJ.) JAGANATH PRASAD *v.* JAIKISHAN PRASAD. **1 P.L.J. 16=34 I.C. 375=3 P.L.W. 164.**

Gift—Manager of Joint Family.

———*Gift—Manager of joint family—Charity—Powers of.*

Under the Mitakshara Law a manager of a joint Hindu family can in the performance of a religious duty make a gift of a reasonable property to a temple. (*Seshagiri Aiyar and Phillips*, JJ.) RAMALINGA CHETTY *v.* SIVA CHIDAMBARA CHETTY. **42 Mad. 440=36 M.L.J. 575=9 L.W. 224=(1919) M.W.N. 426=49 I.C 742=25 M.L.T. 253.**

———*Gift—Manager of joint family—Gift to son-in-law.*

A gift of a reasonable portion of the joint family property to a son-in-law in consideration of a marriage is valid. (*Ayling and Tyabji*, JJ.) SUNDARAM IYER *v.* KRISHNASWAMI IYER. **28 I.C. 992.**

———*Gift—Manager of joint family—Gift to daughter and sister—Intention.*

The managing member of a joint Hindu family with the view of obtaining a suitable husband for his daughter conveyed certain properties to his daughter and his sister the mother of his future son-in-law. *Held*, that the conveyance to the sister was intended to be *benami* for the daughter. The recital in the deed that the properties were his self-acquisitions did not in the circumstances of the case negative his intention of exercising any power of disposition he might have as managing member of the family. 42 Cal. 56, Foll. A gift of Rs. 1,500 (out of the acquisition of Rs. 17,000) is reasonable and valid. (*Wallis*, C.J. *and Hannay*, J.) SABAPATHY CHETTY *v.* PONNUSAWMY CHETTY. **28 I.C. 365.**

HINDU LAW—Gift—Widow.

Gift—Widow.

———*Gift—Widow—Gift of whole estate to daughter on marriage—Effect—Death of daughter.*

Where a widow at the time of her daughter's marriage makes a gift of her whole estate, it amounts in law to an accelaration of the daughters' estate. The fact that it purported to be a gift on marriage does not affect the question. Where the daughter dies before the mother, the latter does not succeed and the cause of action for the next reversioner begins to run from that date and when he allows possession to remain with another for more than 12 years, his rights are barred. (*Benerji*, A.C.J. *and Ryves*, J.) SARTAJI *v.* RAMJAS.
21 A.L.J. 796=L R. 4 A. 505=9 O. & A.L.R. 1013=46 All. 59=1924 All. 166.

———*Gift—Widow—Nearer reversioners interested—Right of a remote reversioner.*

Where a Hindu widow makes a gift in which the nearer reversioners are interested and which is made to a nearest reversioner, a remote reversioner can challenge such a gift. (*Ryves and Gokul Prasad*, JJ.) JAGDEO TIWARI *v.* KUBER NATH PANDEY. **1923 All. 312.**

———*Gift—Widow—Consent of nearest reversioner who is insolvent—Effect.*

A gift by a Hindu widow of the whole estate with the consent of the nearest reversioner who happened to be an insolvent is not a surrender of the whole estate in favour of the nearest reversioner and can be supported only if necessity is proved. If the Hindu Law theory is based on the notion that there is first a surrender to the nearest reversioner and an immediate conveyance by him, then as soon as the estate vests in him, it enures to the benefit of the Receiver in insolvency and hence cannot afterwards be conveyed to another (*Piggott and Walsh*, JJ.) HARIHAR PRASAD *v.* UDAI NATH SAH. **45 A. 260=21 A L J. 77=L.R. 4 A. 70=1923 All. 190.**

———*Gift—Widow—Spiritual welfare—When binding.*

A gift made by a Hindu widow of a moderate portion of her husband's estate for her husband's spiritual welfare is valid. It is insufficient for a pious or meritorious purpose, but must be made with the object of the husband's spiritual welfare. Per *Fforde*, J.—*Quære.*—Whether $\frac{1}{4}$ of the whole estate can be said to be a moderate portion? (*Abdul Raoof and Fforde*, JJ.) MUNSHI LAL *v.* MT. SHIV DEVI.
4 Lah. 336=1924 Lah. 137=5 L L J. 496.

———*Gift—Widow—Invalid gift when operative as surrender.*

It cannot be said that a gift by a widow to a daughter or more generally a gift by a widow to another reversioner should be regarded as a surrender of the estate whatever by the terms of the gift. The question depends on the terms

HINDU LAW—Gift—Widow.

of the gift in question. 11 A. 253; 32 A. 582, Foll. (*Oldfield and Devadoss*, JJ). KARUMURI RAMALAKSHMI *v.* BODA NAGARATNAM.
(1923) M.W.N. 172=44 M L J. 677=17 L.W. 11=1923 Mad. 335.

———*Gift—Widow—Maintenance.*

Where a Hindu widow in possession of her husband's estate and yielding an annual income of Rs. 45 conveyed certain properties to her mother-in-law in lieu of maintenance. *Held*, that an absolute estate was conferred on the mother-in-law. The question whether an absolute or limited estate is given depends on the terms of the deed. Per *Seshagiri Iyer*, J.—Ordinarily an estate taken by Hindu female on transfer or inheritance is the same; a male is presumed to take an absolute estate and a female a limited one, in the absence of express words; if apt words are used the estate conveyed whether to male or female would be absolute. Words conferring power of sale will not be conclusive but if the words convey unmistakeably full estate, sex is no reason for cutting down the estate. (*Seshagiri Aiyar and Ayling*, JJ). NAMASIVAYA PILLAI *v.* KUTHALALINGAM PILLAI. **21 M L.T. 30=(1917) M.W.N. 78=38 I.C. 840=5 L.W. 211.**

———*Gift—Widow—Alienation—Consen of reversioners—Presumption as to validity.*

The consent of the whole body of next reversioners to a gift by a Hindu female owner for life is as presumptive evidence of that gift having been made for purposes or in circumstances which would validate it after the donor's death, in the way in which such consent was held in 42 Mad. 523 (P.C.) to be presumptive evidence of the legal necessity for an alienation for consideration. The consent of the people interested in quarrelling with an alienation would be equally strong proof of its being justifiable whether it was a gift or a sale or a mortgage. The donee gets an absolute estate, though the consenting reversioners are themselves life-tenants. (*Batten*, J. C. *and Hallifax*, A.J.C.) MT. KUSHI BAI *v.* MANRAKHAN. **1923 Nag. 265.**

———*Gift—Widow—Consent of reversioner—Necessity—Presumption.*

The doctrine, that consent of a reversioner to a widow's alienation raises a presumption that the transaction is a proper one and for valid necessity, is not applicable in case of gift by a widow. Hindu Law does not recognise any expression of a Hindu's wish during life as validating an alienation made by his widow after his death. (*Daniels and Dalal*, A. J.Cs.) DRIGPAL SINGH *v.* HARHAR BAKSH.
64 I.C. 80=24 O.C. 245.

Guardian.

See HINDU LAW—MINORITY AND GUARDIANSHIP.

Husband and Wife.

See HINDU LAW—MARRIAGE.

HINDU LAW—Impartible Estate—Acquisitions.

Idol.

See HINDU LAW, REL.—ENDOWMENT.

Illegitimacy.

See HINDU LAW—SUCCESSION.

Interest.

See DAMDUPAT.

Impartible Estate.

ACQUISITIONS
ALIENATION.
CUSTOM.
DEBTS.
INCIDENTS OF.
MAINTENANCE.
OFFICE.
RIGHTS OF JUNIOR MEMBERS.
SUCCESSION.

Impartible Estate—Acquisitions.

———*—Impartible estate—Acquisitions—Property acquired with income from the estate is no accretion.*

Where all the estate possessed by the Raja other than the impartible Raj was derived from the income of the Raj itself : *Held*, the produce of the impartible estate ordinarily does not belong to and form an accretion to the original property. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort or that had come to him in circumstances entirely disassociated from the ownership of the Raj. *Quœre.*—Whether it be possible in any circumstances to treat moveable property as an accretion to a landed estate of this character. (*Lord Buckmaster*). RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR NARAIN SINGH.
44 M.L.J. 503 = 25 Bom. L. R. 676 = (1923) M.W.N 490 = 18 L.W. 555 = 28 C.W.N. 98 = 37 C L.J. 287 = 32 M L T. (P.C) 157 = L.R. 4 A (P.C,) 65 4 Pat. L T. 319 = 2 P. 319 = 50 I.A. 1 = 1923 P C. 59 (P.C.)

———*Impartible estate—Acquisitions—Accretion.*

In the absence of proof of a special family custom or of an express intention to incorporate the property subsequently acquired by a talukdar, holder of an impartible estate, with the original estate, succession to such acquisitions follows the ordinary law of inheritance. 29 I.A. 82, Rel. (*Mr. Ameer Ali.*) JANKI PERSHAD SINGH *v.* DWARKA PERSHAD SINGH,
35 All. 391 = 40 I.A 170 = 17 C.W.N. 1029 = 14 M L T. 110 = 25 M.L J. 34 = (1913) M W.N. 630 = 18 C L J. 200 = 11 A L.J. 818 = 15 Bom. L R. 883 = 20 I.C. 78 = 16 O C. 216 (P.C.)
[On Appeal from 9 I.C.83.]

———*Impartible estate — Acquisitions—Succession — Primogeniture — Muhammadan family.*

HINDU LAW—Impartible Estate—Alienation.

The Privy Council affirmed the judgment of the Punjab Chief Court holding that the estate of Kunjpara created by a sanad from the Muhammadan ruler in 1748 as a hereditary jagir, was an impartible Raj which had thencefourth descended under a family custom by the rule of primogeniture, at variance with the ordinary Muhammadan Law. The custom also applied to acquisitions made by the holders of the estate after 1849, when the Government withdrew from the Chiefs of Kunjpara the Civil and Criminal Powers they had hitherto exercised. There was nothing to show that the Government thereby intended to alter their status or vary their cutom of succession. (*Mr. Ameer Ali.*) IBRAHIM ALIKHAN *v* MUAMMAD AHSANULLAH,
39 C. 711 = 11 M.L.T. 225 = (1912) M.W.N. 316 = 50 P.W.R. 1912 = 15 C.L.J. 352 = 9 A.L J. 390 = 14 Bom. L.R, 270 = 22 M L.J. 478 = 16 C W.N. 625 = 13 I,C. 695 = 168 P.L,R. 1912 = 39 I.A. 85 (P.C.).
[On Appeal from 47 P.R. 1908.]

———*Impartible estate — Acquisitions—Accretion—Proof of—Intention.*

Whether an acquisition by a taluqdar or a grantee is to be considered as an accretion to his taluq grant depends upon proof of his intention to incorporate the accretion with the taluq or grant. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MUHAMMAD ABDUL RAQUIB KHAN *v.* SALAMAT BIBI. **25 I C. 680 = 1 O.L.J. 397,**

———*Impartible estate—Acquisitions—Savings—Devolution of purchases from them.*

When there is no evidence to show that the holder of an impartible estate, who had purchased properties out of his savings therefrom intended to incorporate the purchased properties with the ancestral estate, for the purpose of his succession such properties are self-acquired and must follow the rule of the Mitakshara Law as to self-acquired property. (*Chapman and Roe*, JJ.) RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR N. SINGH.
2 P L J. 239 = 38 I.C. 255 = 3 P.L.W. 437.

Impartible Estate—Alienation.

———*Impartible estate—Alienation— Rights of holder—Power to dispose of estate.*

Persons living jointly with the holder for the time being of an impartible estate have no co-parcenary rights in it and they cannot claim a partition of properties. The holder can alienate the estate so as to defeat or determine any contingent interest that members of the joint family might have in it under the custom of primogeniture. (*Sir John Edge*). TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH.
42 Cal. 1179 = 42 I.A. 192 = 19 C.W.N. 1119 = 29 M L.J. 371 = 18 M.L.T. 228 = 2 L W. 843 = 13 A.L.J. 1034 = 17 Bom. L.R 1012 = 22 C L.J. 498 = 30 I.C. 833 = (1916) M.W.N. 717 (P.C.)

HINDU LAW—Impartible Estate — Alienation.

———*Impartible estate—Alienation—Custom.*

It is only where a custom, in restraint of alienation, is not proved that an impartible estate is alienable. A maintenance grant by the Raja of Pachete to a junior member lasts only during his lifetime. (*Mookerjee and Beachcroft*, JJ.) CHOTA BAHIRA SAHEBA *v.* PURNA CHENDUR CHAUDHURI.

19 C.W.N. 1272=27 I.C. 982=21 C.L.J. 114

———*Impartible estate—Alienation—Custom of inalienability—Proof of—Permanent Settlement Regulation* (XXV *of* 1802), *S.* 8—*Effect of.*

Held with reference to the Zemindari of Karvetnagar that during the period, the Polygar was semi-independent under the Nawab, a restraint on alienation of the whole or part of the Raj without the permission of the overlord was under the very circumstances of the tenure necessary, (2) that however, as soon as the military tenure under which the properties were held, was put an end to and the British Government granted the lands under a quite different tenure with express powers of alienation and after imposing a liability on the lands to be attached and sold in execution, the restraint on alienation came to an end. Per *Napier*, J.:—By the sanad the Government created a new estate with the incident of alienability for the benefit of the Zemindar and the fact that the similar language is found in the sanad of other Zemindaries on whose alienation there is no such restraint under the prior Government does not affect the question. Per *Curiam*.—The essence of a custom is its being some special usage modifying the Law. A practice, however, long standing which merely followed but did not modify the then existing law cannot be relied on as a custom having the force of law. 22 Mad. 383 (P.C.) Foll. Where the evidence showed that from time to time the son or brother of the Zemindar for the time being protested against an alienation made by him not for necessity and set up a custom or inalienability but each Zemindar on inheritance from his father continued to alienate the properties without any necessity; *held*, that the custom as to the inalienability had not been proved. (*Sadasiva Iyer and Phillips*, JJ.) ZEMINDAR OF KARVETNAGAR *v.* SUBBARAYA PILLAI.

(1918) M.W.N. 146=43 I.C 871=7 L.W. 36.

———*Impartible estate — Alienation—Custom—Military tenure—Permanent settlement—Effect of.*

Impartibility leads logically to the existence of a power of alienability and not to a rule of inalienability. The custom of impartibility and of succession by a single owner are incidents attached not to the property of a family but to the law governing that particular family. 28 Mad. 508 (P.C.); 30 Cal. 843 (P.C.); 36 Cal. 943 (P.C.) 12 M.I.A. 523; 1 Cal. 186 (P.C.), Foll., inalienability of the Karvetnagaram Estate prior to Permanent Settlement ceased with the Permanent Settlement and there could be no longer any inalienability due to tenure. Inalienability based on alleged custom was not proved. The evidence proved that each Zemindar had exercised the right of alienating any portion of the estate he chose for any purpose which he thought fit. Moreover where a supposed custom has followed the ordinary law as laid down by the Courts, though wrongly assumed to be the ordinary law, such custom, as it did not modify the law as generally understood and had not independently the force of law, cannot be recognised as valid custom having the force of law. (*Sadasiva Iyer and Napier*, JJ.) RAJA KUMARA VENKATA PERUMAL RAJU *v.* UDDAGIRI PAPA NAIDU.

41 I.C. 208=21 M.L.T. 351.

HINDU LAW—Impartible Estate—Custom.

———*Impartible estate—Alienation—Right of junior member to set aside.*

Whether in view of the fact that the son of the holder has only a chance of succession he can sue during father's lifetime for declaration of invalidity against his interest of sale of Zemindari in execution of a decree against the holder. Under the law as it stood in 1869, the holder of an impartible Zemindari was competent to incur debts and make alienations of the whole estate only for necessary purposes. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA *v.* MURUGAPPA.

36 Mad. 326=(1913) M.W.N. 86=12 M.L.T. 571=18 I.C. 49=23 M.L.J. 658.

Impartible Estate—Custom.

———*Impartible estate—Custom—Proof of impartibility.*

The mere fact that the successive holders of a Zamindari have alienated portions of the estate by way of grants for the maintenance of junior members does not negative the impartibility of the estate. 10 All. 272 (P.C.); 41 Mad. 778 (P.C.), Ref. (*Lord Atkinson.*) KISHORE SINGH *v.* GAHENBAI.

15 N.L.R. 176=37 M.L.J. 562=17 A.L.J. 1077=26 M.L.T. 491=1 U.P.L.R. (P.C.) 94=53 I.C. 630=(1920) M.W.N. 82 (P.C.)

———*Impartible estate—Custom—Proof of—Origin of the tenure—Raj—Family custom—Concurrent findings.*

The Zemindari of Nidadavole which had originally formed part of the estate of Nuzvid was granted in 1802 under a sanad in common form under Madras Regulation (XXV of 1802). It was claimed that the estate was impartible as being in the nature of a raj (no family custom of impartibility being alleged or proved). Both the Courts in India held that the estate was not in the nature of a raj. *Held*, that the concurrent findings of the Courts below should be accepted, especially as it was not shown that they were not justified by the

HINDU LAW—Impartible Estate—Custom.

evidence. 12 App. Cas. 101, 104, Ref. (*Lord Parker of Waddington.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **41 I.A. 51=17 C W.N. 1221=14 M.L T. 259=25 M.L J. 386=18 C.L.J. 393=(1913) M W N. 791=21 I.C. 339=15 Bom. L.R. 1010 (P.C.).**

———*Impartible estate—Custom—Proof of—Madras Regulation* (XXV *of* 1802)*—Sanad in-common form—Proof of family custom.*

The principles applicable to the determination of the question whether an estate is partible or impartible are these: (1) The absence of a sanad under Madras Regulation (XXV of 1802) does not affect the title to the land. 1 I.A. 282, 306, Ref. (2) The acceptance of a sanad is common form under Regulation (XXV of 1802) does not, of itself, avail to alter the succession to a hereditary estate. 32 I.A. 261. (3) Unless there can be an existing estate with other incidents which a sanad in common form can operate to confirm such a sanad will confirm or confer on the grantee an estate descendible according to the ordinary rules of inheritance under the Hindu Law. 7 I. A. 38. (4) To establish that any estate is descendible otherwise than in accordance with the ordinary rules of Hindu Law, it must be proved either that it is from its nature impartible and descendible to a single heir or that it is so impartible and descendible by virtue of a special family custom. 6 M.I.A. 164, Ref.; and (5) The nature of the estate and the existence or otherwise of a special family custom are questions of fact to be determined on the evidence available in each case. 17 I.A. 134, Ref. (*Lord Parker of Waddington.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **41 I A. 51=17 C W N 1221=14 M.L.T. 259=25 M L J. 386=18 C L J. 393=(1913) M.W.N. 791=21 I.C. 339=15 Bom. L R. 1010 (P.C.) [On Appeal from 29 Mad 437=16 M.L.J. 178]**

———*Impartible estate—Custom—Evidence of—Grant of lands by Government sanad.*

Where lands granted originally as Jaghir were subsequently treated by Government and its officers as an appanage to the title of "Rajah", *held*, that the incidents of impartibility and primogeniture attached to the grant. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. **36 Bom. 639=39 I.A. 202=16 C.W.N 1058=28 M.L.J. 383=12 M L.T. 472=(1912) M.W.N. 1140=14 Bom L R 1226=16 I.C. 239=17 C L J. 17 (P.C.)**

———*Impartible estate—Custom—Evidence of—Allotment of lands to junior members—Effect of.*

The Privy Council upheld the decision of the Chief Court that the estate of Kunjpara which was created by a sanad from the ruling power in 1748, as a heriditary jagir was an impartible *raj* which had thenceforth descended under

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a family custom by the rule of primogeniture, at variance with Muhammdan Law. A few instances of allotments of villages to junior cadets of the family were insufficient to disprove the custom of impartibility, in the absence of evidence to show under what circumstances they were so allotted or what proportion they bore to the share which the junior members would have got on partition. (*Mr. Ameer Ali.*) IBRAHIM ALI KHAN *v.* MUHAMMADAN AHSAN ULLAH. **39 Cal. 711=11 M.L.T. 225=(1912) M.W.N. 316=50 P.W.R. 1912=15 C.L J. 352=9 A L.J 390=14 Bom. L.R. 270=22 M.L J. 478=16 C.W.N. 625=168 P.L R. 1912=13 I.C. 695=39 I.A. 85 (P.C.) [On Appeal from 47 P.R. 1908].**

———*Impartible estate—Custom—Compromise.*

On a devise of an impartible estate there were claims to the estate under and against the will which were compromised, *held*, on a construction of the compromise that the impartibility of the estate was maintained. (*Sir John Edge.*) LEKRAJ *v.* HARPAL SINGH. **34 All. 65=11 M.L.T. 1=(1912) M.W.N. 16=9 A.L.J 40=16 C.W.N. 217=15 C L.J. 72=14 B L.R. 33=23 M.L.J. 1=13 I.C. 259=39 I.A. 10 (P.C.).**

———*Impartible estate—Custom—Proof of.*

Custom of impartibility should be ancient and invariable and should be established by person alleging it by clear and unambiguous evidence. (*Mookerjee and Beachcroft, JJ.*) HAZARIMAL *v.* ABANI NATH. **17 C.L.J. 38=18 I.C. 625=17 C.W.N. 230.**

———*Impartible estate—Custom — Family custom—Not attached to property.*

The custom of impartibility and of succession by single owner are incidents attached not so much to the property held by a family as to the law governing the family. (*Sadasiva Iyer and Phillips, JJ.*) ZEMINDAR OF KARVETNAGAR *v.* SUBBARAYA PILLAI. **(1918) M.W.N. 146=43 I.C. 871=7 L.W. 36.**

———*Impartible estate—Custom — Impartibility—Proof of.*

An acquired Zemindari is not impartible unless a custom of impartibility is proved to exist in the family before the acquisition. (*Wallis, C.J. and Seshagiri Aiyar, J.*) MUTHUSAMI NAICKER *v.* MUTHUSAMI NAICKER. **27 I.C. 3.**

———*Impartible estate—Custom — Jagir—Saranjam.*

Whether a particular estate is impartible or is subject to the ordinary Hindu Law of inheritance must be decided according to the circumstances of each case and the evidence

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given in it. A saranjam in the Bombay Presidency is ordinarily impartible and it descends to the eldest representative of the last holder. This special feature of a saranjam estate should not necessarily be made applicable to a jagir village in Berar, especially when the jagir in question is a grant of the village itself and not merely of the revenue. (*Dhobley*, A.J.C.) KRISHNA RAO *v.* NILKANTH. **5 N L J 25 = 18 N.L.R. 163 = 1922 Nag. 52.**

———*Impartible estate—Custom—Proof of —Estate not absolutely owned by the family.*

Impartibility never attaches to small estates and it cannot survive as a family custom independently of some particular estate. A family custom of succession to an estate not absolutely owned by the family can never exist. An impartible estate in Hindu Law is not only consistent with but postulates that the family to which it belongs is joint. No presumption against indivisibility of possession or title can arise by reason of joint living. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP NARAIN SINGH *v* THAKUR NIRMAN PRASAD SINGH. **9 O.L.J. 552 = 1923 Oudh 61.**

———*Impartible estate— Custom — Agreement to create—Not valid.*

Owners of property which is in its nature partible, cannot, by an agreement among themselves, impress upon it permanently the character of impartibility. (*Daniels*, A J.C.) SAKHAWAT ALI *v.* ABU SAID. **52 I.C. 73 = 22 O.C. 100.**

———*Impartible estate — Custom—Gaddidars.*

The estates of the Baisi Ghowrasi Gaddidars are impartible and descend to the eldest son. But this does not show that they are non-Hindus now. They have adopted Hinduism to such a degree as to raise a presumption that the community has assimilated the law of adoption. (*Chapman and Atkinson*, JJ.) SHAH DEO NARAIN DAS *v.* KUSUM KUMARI. **46 I.C. 929.**

———*Impartible estate — Custom — Chota Nagpur.*

The custom of impartibility and primogeniture prevails in the estate of the Maharajah of Chota Nagpur and in his family. (*Atkinson and Jwala Prasad*, JJ.) RAMCHARAN MAHTO *v.* HARIHAR MAHTO. **35 I.C. 392.**

Impartible Estate—Debts

———*Impartible estate—Debts—Succession —Survivorship.*

All members of a family are to be deemed to be joint in estate where one member holds the ancestral impartible property. Survivorship governs the succession in such a case. Therefore, the successor is not the heir or legal representative of his predecessor and cannot be said to hold his assets. (*Richards*, C J. *and Banerjee*, J.) INDAR SEN SINGH *v.* HARPAL SINGH. **34 All. 79 = 12 I.C. 915 = 8 A.L.J. 125.**

HINDU LAW—Impartible Estate—Incidents of.

———*Impartible estate — Debts — Liability of suecessor.*

A creditor is not bound to inquire to what extent the debts could have been avoided by proper management. (*Miller and Abdur Rahim*, JJ.) VARAGIMA SOMASUNDARA *v.* MURUGAPPA. **36 Mad. 325 = 3 M L J. 658 = 12 M.L.T. 571 = 18 I.C. 49 = (1913) M.W.N. 86.**

———*Impartible estate—Debts—Liability of successor.*

The interest of the holder of an impartible estate does not die with him and his successors are bound by debts created by him on the estates. 10 All. 272, Foll. (*Chamier, Chapman and Roe*, JJ.) SHYAM LAL SINGH *v.* BIJAY NARAYAN KUNDU. **2 P.L.J. 136 = 1 P.L.W. 140 = 39 I.C. 86 = (1917) Pat. 121.**

Impartible Estate—Incidents of.

———*Impartible estate—Incidents of.*

No co-parcenary exists in an impartible Zemindari, which is merely a creative of custom. (*Viscount Cave*) BISHEN PRAKASH NARAYAN SINGH *v.* JANKI KOER. **24 C.W.N. 857 = 28 M.L.T. 105 = 62 I.C. 289 = 12 L.W. 349 (P.C.).**

———*Impartible estate — Incidents of — Dharbanga Raj—Custom.*

By Kulachar the properties of Dharbanga Raj descend according to the rule of primogeniture. Junior sons are entitled by family custom to *babuana* grant for the maintenance of themselves and their male descendants in the male line (and the wife of the younger son gets by a *sohaj* grant the usufruct of a portion of the estate for the maintenance of herself and her male descendants in the male line). Such lands descend not to one male descendant only but to all existing male heirs in the male line of the grantee as co-parceners and is partible as among them. 36, I.A. 176, not Foll. and Expl. Such partition however does not put an end to the custom excluding females and descendants of female lines from succession to these lands. These lands in spite of the grant form part of the Raj. Even the use of such words as 'Auras Putra Pautradi' in these grants are not words of general inheritance but (as the grants are the creature of custom) should be regarded as words of limitation consistent with the custom. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. **42 Cal. 582 = 18 C.W.N. 1249 = 21 C.L.J. 9 = 27 M.L.J. 373 = (1914) M.W.N 807 = 16 M.L.T. 382 = 1 L W. 863 = 12 A.L.J. 1217 = 41 I.A. 276 (P.C.) = 25 I.C. 417 = 17 Bom. L.R. 18 (P.C.).**

———*Impartible estate—Incidents of—Wainganga Zemindaris of C. P. C.—Amgaon zemindari.*

The Amgaon Zemindari before the Thirty Years Settlement was of the nature of a Raj and therefore impartible and subject to the rule of single succession, the other members of the

HINDU LAW—Impartible Estate—Incidents of.

family of the Zemindar for the moment being entitled to suitable maintenance and to any specific share in the income. It was an estate of an exactly similar character that was conferred by Government on the Zemindar at the Thirty Years Settlement, In addition a custom had by that time grown up in the Amgaon family that the estate should be held as an estate of that nature and subject to those conditions. Nothing occurred at the Thirty Years Settlement or has occurred since, to alter the nature of the grant or to affect the validity of the family custom. The Zemindari is therefore declared to be impartible. Important history of the C. P. Zemindaris traced. (*Batten*, J.C. *and Hallifax*, A.J.C.) MALHAR RAO *v.* MARTAND RAO. **6 N L J 189 = 1923 Nag. 201.**

——*Impartible estate — Incidents of—Co-parcenary.*

There can be no co-parcenary in an impartible estate. 41 Mad. 778 (P.C.), Foll. (*Hallifax*, A.J.C.) JIRJODHAN *v.* MADAN. **62 I.C. 610 = 4 N.L.J. 4.**

——*Impartible estate—Incidents of—Mortgage in the names of two persons—Presumption.*

A fact that the mortgage stood in names of the two persons goes against the case that the estate was impartible. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O.L.J. 552 1923 = Oudh 61.**

——*Impartible Estate — Incidents of — Divided and undivided family.*

Though the members of a joint Mitakshara family do not acquire in impartible property the same rights as in impartible property belonging to the family such as the right of joint enjoyment, the right of partition or the right of restraint on alienation, they retain the right of survivorship of proving that an impartible estate was the separate or self-acquired property of the last owner is on those making the assertion. 25 C.W.N. 564 = 46 C. 362 = 15 C. 471, Ref. (*Miller*, C.J. *and Foster*, J.) THAKURAIN FULBATI KUMARI *v.* MAHARAJAH KUMAR RAO MAHESHWAR. **2 P. 685 = 4 P.L.T. 473 = 1923 Pat. 161 = 1923 P. 453.**

Impartible Estate—Maintenance.

——*Impartible estate — Maintenance — Rights of junior members.*

Apart from custom and from certain near relationships to the holder, the junior members of the family of a Zemindar entitled to an impartible Zemindari have no right to maintenance out of it, There is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right. Where the plaintiff, the son of the paternal uncle of the holder of a Zemindari brought a suit for maintenance, it was held by the Judicial Committee that the issue which should have been tried was whether according to the custom among Uriya Zemindars or the custom of the family, the plaintiff is entitled to maintenance out of the income of the Zemindari; the burden of proving the custom entitling him to maintenance should have been put upon the plaintiff and not upon the defendants to prove the custom negativing the ordinary law. (*Viscount Cave.*) MAHARAJAH OF JEYPORE *v.* VIKRAMA DEO GARU **37 M.L.J. 198 = 21 Bom. L.R. 930 = 10 L.W. 436 = 17 A.L.J. 1011 = (1919) M W.N. 824 = 24 C.W.N. 226 = 52 I.C. 333. = 31 C.L J. 91 (P.C).**

HINDU LAW—Impartible Estate—Maintenance.

——*Impartible estate — Maintenance — Grant for—Liability of grantor.*

In a suit for recovery of a certain *Zamindari* a compromise was arranged that the plaintiff and his heirs should receive a fixed monthly allowance in future from the holder of the Zamindari and his successors. The son of the grantee sued for arrears of allowance and obtained a decree but his heirs were held to have no right to execute it and they had to institute a regular suit. *Held*, that (1) The grant could be charged on the Zamindari and could be enforced by descendants of the original grantee. (Per *Seshagiri Aiyar*, J.)—As appeared from the language of the grant, the grantor's heirs were under liability for all times to come. That a special language was not needed for creating a charge and the charge created in the present case was entered to be one on the *Zamindari*. (*Per Wallis*, C.J.)—The grant amounted to, one to junior members of an impartible property for maintenance and could not be deemed to be a charge on the whole estate. The words used could not be taken as sufficient for creating a change on the *Zamindari* only an annuity in the nature of a personal estate which was descendable as a real estate, was created. (*Wallis*, O.C.J. *and Seshagiri Aiyar*, J.) RAJARAJESWAR DORAI *v.* SUNDARAPANDIYASWAMI. **27 I.C. 283 = 27 M.L.J. 694.**

——*Impartible estate — Maintenance—Right of widows of junior members.*

Widows of junior members are entitled to receive maintenance out of it, but it is doubtful where a compromise to that effect is valid. 23 M.L.J. 70, Rel. (*Miller and Tyabji*, JJ.) KACHI YUVA RANGAPPA KALAKKA THOLA UDAYAR *v.* KULANDAI AYAL, **26 M L.J. 205 = 23 I.C. 831 = (1914) M W N. 874.**

[This is no longer law. 41 Mad. 778 = 52 I.C. 333 = 47 I.C 384 = 37 M.L J. 188 (P.C.)]

——*Impartible estate — Maintenance—Remoteness of relationship—Effect on right to maintenance.*

The right of a family member to claim maintenance from the holder of an impartible

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estate joint with the claimant must depend on the question whether, if the estate were partible the person claiming the maintenance would be entitled to maintain a suit for partition. The question of succession to an impartible estate discussed. The decree of relationship for determining the right to maintenance out of an impartible estate must be taken to be the same for determining the right to partition in the case of a partible estate. The right to maintenance is not lost by reason of the fact that the person claiming maintenance is only an adopted and not *aurasa* son of his father. The fact that a member is removed more than three degrees from the common ancestor is no bar to his succession by survivorship and therefore is not a bar to his right to maintenance. (*Benson and Sundara Iyer*, JJ.) TIRUMAL ROW SAHEB *v.* RANGASAWMY.

23 M.L J. 79 = (1912) M.W.N. 790 = 15 I.C. 412 = 12 M.L.T. 245.

[This is no longer law.] See 52 I C. 333 41 Mad. 778 = 47 I.C. 354 (P.C.) = 37 M.L J. 188 (P.C.)

———*Impartible estate -- Maintenance — Relatives of Zemindar.*

The relatives of former Zemindars, claiming maintenance from an impartible Zemindari, must prove a custom entitling them to such a right. (*Macnair*, A J.C.) DHARAM SINGH *v.* LOKNATH SINGH. **62 I.C. 198.**

———*Impartible estate— Maintenance — Junior members—Transferee—Custom.*

A transfer of an impartible estate is not subject to rights of maintenance claimed by younger members of the family of the transferor, unless a family custom to that effect is established. (*Roe and Coutts*, JJ.) THAKUR DEBENDRA NATH SAH DEO *v.* DEO NANDAN SINGH. **48 I.C. 613 = 3 P.L.J. 648.**

Impartible Estate—Office.

———*Impartible estate—Office— Grant by sovereign—Lands granted to holder of office of priest described as such.*

Where land is granted by a sovereign to the royal priest described as such and is made resumable on failure of lineal heirs, the estate is not impartible but subject to ordinary law of inheritance and partition among the heirs of grantee. Where there is a grant of lands by a sovereign for a charitable purpose and the charity is to be performed by the holder of the office of royal priest, the properties of the endowment are not subject to partition among the heirs of grantee but are impartible and can be held only by the priest for the time being. (*Sir Walter Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.

41 Mad. 296 = 4 P.L W. 91 = 34 M.L.J. 130 = 16 A.L.J. 113 = 27 C L J. 231 = 22 C.W.N. 457 = 20 Bom. L.R. 514 = 45 I.A. 1 = 7 L.W. 22 = 43 I.C. 806 (P.C.)

[On Appeal from 34 Mad 470 = 20 M.L.J. 108 = 6 M.L.T. 319.]

HINDU LAW—Impartible Estate—Rights of junior members.

———*Impartible estate—Office — Grant for service—Acquisitions from.*

Property allotted by the State to a person in consideration of the discharge of certain duties or as emoluments of an office is *prima facie* impartible even though the duties or office may be hereditary in a particular family. Acquisitions from the property are *prima facie* the self-acquisition of the grantee. (*Mitra*, A.J.C.) SHIV RAM AMBADASS *v.* SHRIDHAR SHIVRAM. **43 I.C. 137.**

Impartible Estate—Rights of junior members.

———*Impartible Estate—Rights of junior members—Partition by a member—Proof.*

It is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever, and this is also true with regard to an impartible estate; but as in that case the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation. (*Lord Buckmaster*), RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR NARAIN SINGH.

44 M.L.J. 503 = 25 Bom. L.R. 676 = (1923 M.W.N. 460 = 18 L.W. 555 = 28 C.W.N. 98 = 37 C.L J 287 = 32 M.L.T. (P.C.) 157 = L.R. 4 A. (P.C.) 66 = 4 P.L.T. 319 = 2 P. 319 = 50 I.A. 1 = 1923 P.C. 59.

———*Impartible estate—Rights of junior members.*

Junior members cannot partition nor agree to separate. Where the junior members partitioned property given to their ancestor for maintenance; *held* that it was not conclusive of the question whether the Raj had ceased to exist. (*Richards*, C.J. *and Rafique*, J.) BAIJ NATH PRASAD SINGH *v.* TIJ BALI SINGH.

38 All 590 = 38 I.C. 894 = 14 A.L J. 913.

———*Impartible estate—Rights of junior members.*

Junior members in an impartible Zemindari have no legal rights to maintenance unless there is a custom to the contrary. (*Wallis*, C.J. *and Krishnan*, J.) GURUSAMI PANDIYAN *v.* PANDIA CHINNATHAMBIAR. **44 Mad. 1 = 39 M.L J. 529 = (1920) M.W.N. 660 = 61 I.C. 242 = 28 M.L.T. 365.**

———*Impartible estate—Rights of junior members—Dayabhaga family.*

A junior member of the family of the holder of an impartible *Zemindary* is entitled to maintenance only as in a *Dayabhaga* family because of his relationship and not of any interest in the property. (*Sankaran Nair and Oldfield*, JJ.) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. **(1918) M.W.N. 369 = 28 M.L.J. 624 = 29 I.C. 356 = 39 M. 396.**

Impartible Estate—Succession.

——*Impartible estate—Succession—Separate or self-acquired.*

Though a Raj is impartible, it cannot become separate or self-acquired property. It may be self-acquired or joint family property. In the latter case succession will be governed by the rule obtaining in the joint families *i.e.*, by the rules of survivorship although the incumbent will hold it without the others sharing it. (*Lord Dunedin*) BAIJNATH PRASAD SINGH *v.* TEJ BAGI SINGH **43 All. 228 = 48 I.A. 195 = 19 A.L.J. 317 = 33 C.L.J. 388 = 40 M.L.J. 387 = (1921) M.W.N. 300 = 25 C.W.N. 561 = 2 Pat. L.T. 257 = 23 Bom. L.R. 654 = 29 M.L.T. 358 = 3 U.P.L.R. (P.C.) 35 = 60 I.C. 534 (P.C.) =**

[On Appeal from 38 I.C. 849.]

———*Impartible estate—Succession—Co-parcenary, none.*

An impartible Zemindari is the creation of custom and it is of its essence that co-parcenary in it does not exist. Consequently the widow of a co-parcener succeeds in preference to his undivided male cousin. (*Viscount Cave.*) RAJKUMAR BABU BISHUN PRAKASH *v.* MAHARANI JANKI KOER. **24 C.W.N. 857 = 28 M.L.T. 105 = 12 L.W. 319 (P.C.)**

[The Privy Council have since, in a fully argued case, held that this decision is erroneous. *See* Baynath Prasad Singh v. Tej Bali Singh, 60 I.C. 534 (P.C.)]

———*Impartible estate—Succession—Primogeniture—Conditions of its recognition—Acceptance by the head of the family of a Government sanad cannot destroy custom—Impartible estates—Origin.*

A custom of primogeniture, whereby women are excluded from inheritance and the male relative in the eldest line of male descent from the last holder or his father or grandfather succeeds, if observed and acted upon for a long time, becomes the law of the family regulating the succession to the family estate; and the ordinary Hindu Law does not apply. Such a custom may survive the primitive condition of things out of which it originally sprang; and the head of the family for the time being, cannot by accepting a Government Sanad containing clauses inconsistent with the custom, destroy it or render it inoperative. A family may agree, expressly or impliedly, to continue to observe a custom necessitated by the condition of things existing in primitive times, after that condition had completely altered; and in such a case, the principle embodied in the expression *cessat ratio cessat lex* does not apply. One of the ways in which impartible estates may originate is by independent chiefs or feudatories exercising almost autocratic powers being gradually in the course of time reduced by a paramount power to the position of ordinary Zemindars. They may also owe their origin to family arrangements followed up in practice

for many generations, whereby it was originally agreed that the family property should be impartible and be held and managed for the benefit of the whole family by a single member at a time in a certain order of succession the other members being entitled to maintenance only, without any power of interference with the management. (*Lord Atkinson*). RAO KISHORE SINGH *v.* GAHENABIBI.

(1920) M.W.N. 82 = 15 N.L.R. 176 = 37 M.L.J. 562 = 17 A.L.J. 1077 = 26 M.L.T. 494 = 53 I.C. 630 = 1 U.P.L.R. (P.C.) 94 (P.C.).

———*Impartible estate—Succession—Oudh—Taluka—Primogeniture—Accretions — Substitution of properties for those granted by sanad—House allotted to talukdar—Crown grant.*

The Crown has in British India power to grant or transfer lands and by its grant or transfer to limit in any way it pleases the descent of such lands. But a subject has no right to impose upon lands or other property any limitation of descent which is at variance with the ordinary law of descent applicable to his case. Villages transferred by the Government in exchange for villages included in the talukdari Sanad in Oudh must be treated as talukdari villages and where a house is granted by Government to a Talukdar for his use as such, the right to possession of it would on his death pass to his successor in the Talukdari Estate and not to his heirs under the personal law. There being no family custom of primogeniture the acquisitions of the Talukdar passed to his heirs under the Hindu Law. (*Sir John Edge.*) RAJENDRA BAHADUR SINGH *v.* RANI RAGHUBANS KUNWAR. **40 All. 470 = 21 O.C. 106 = 24 M.L.T. 282 = 5 O.L.J. 401 = 8 L.W. 570 = (1918) M.W.N. 831 = 28 C.L.J. 456 = 23 C.W.N. 101 = 20 Bom. L.R. 1075 = 43 I.C. 213 = 48 I.A. 134 (P.C.).**

——*Impartible estate—Succession—Widow of last owner—Right to inherit—Separation in estate.*

The widow of the last holder of an impartible estate which descends by primogeniture is not excluded from succession to the estate as his heir, if her husband was in fact separated and died without male issue. There is no inconsistency between impartibility and the right of females to inherit. The general law of inheritance will prevail unless a custom of exclusion of females from succession is proved. 12 M.I.A. 523; 9 M.I.A. 539 and 29 I.A. 178, Ref. to. Where the holder of an impartible estate granted a maintenance grant to his only brother who built a separate house for himself, established a separate *Tulsi Pinda* (worship) and *Thakurbari*, lived separately from his brother and defrayed the expenses of his daughter's marriage out of his own pocket. *Held*, that there had been a complete separation between the brothers and that on the death of the holder of the estate without male

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issue his widow succeeded to the estate. (*Sir John Edge.*) TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH. **42 Cal. 1179 = 42 I A. 192 = 19 C W.N. 1119 = 29 M.L J. 371 = 18 M L T. 228 = 2 L.W. 813 = 13 A.L J. 1034 = 17 Bom. L.R. 1012 = 22 C L.J. 498 = 30 I.C. 833 = (1915) M W.N. 717 (P.C.).**

[The effect of this case and other decision of the Privy Council is fully explained in 60 I C 534 (P.C.)].

———*Impartible estate—Succession—Babuana and Sohog grants.*

Babuana and Sohog grants made by the Darbhanga Raj for the maintenance of the male and female members of the family, though liable to revert to the raj on failure of male issue in the male line of the grantee are ancestral property in the hands of sons of the grantee and are liable to partition. There is a custom of exclusion of widows and daughters from inheritance. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASION. **42 Cal. 582 = 41 I.A. 275 = 18 C.W.N. 1249 = 27 M.L J. 373 = 16 M.L.T 382 = 1 L W. 863 = (1914) M.W.N. 807 = 12 A.L J. 1217 = 21 C L J. 9 = 25 I C. 417 = 17 Bom. L.R. 18 (P.C.) [On Appeal from 3 I.C. 207].**

———*Impartible estate—Succession — Primogeniture*—Kismats *in Nawagrah* Zemindari.

In the Nawagarah *Zemindari* in Manbhum. Chota Nagpur, *Kismats* descend by the rule of primogeniture on the eldest sons, the maintenance grants being made to the younger branches of the family. Each *Kismat* is to all intents and purposes regarded as an impartible estate. (*Chetty and Teunon, JJ.*) JAGANNATH MARWARI *v.* GIRIDHARI SINGHA. **29 I.C. 429 = 19 C W.N. 102.**

———*Impartible estate—Succession—Pittapur Zemindary.*

The Zemindary of Pittapur is an impartible estate governed by the Mitakshara Law and descending by lineal primogeniture. (*Sankaran Niar and Oldfield, JJ.*) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. **(1915) M.W.N. 369 = 28 M L J 624 = 29 I.C. 356 = 39 M. 396**

———*Impartible estate—Succession—Survivorship — Family arrangement superseding senior line—Effect.*

Where as the result of a family arrangement the junior line in an impartible estate was substituted for the senior line, but there was no other evidence of any further interference with the rights of the senior line, the estate still remains joint family property and on the extinction of the junior line, the senior line takes by survivorship. Per *Krishnan*, J.—To show that an impartible estate has become the separate property of the holder, it is not

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absolutely necessary to prove that there was some division in which that property was involved or that the right of others in it were abandoned. Each case has to be decided on its own facts. Per *Ramesam*, J.—The holder of an impartible estate cannot by giving a registered notice to the junior members that he intends to be divided in status as regards all the partible properties and impartible properties put an end to the rights of junior members over the impartible estate. Case-law on the subject fully reviewed. (*Krishnan and Ramesam, JJ.*) ANNADANA JADAYA GOUNDER *v.* KONAMMAL. **17 L.W. 107 = (1923) M.W.N. 15 = 1923 Mad. 402.**

———*Impartible estate—Succession—Rival claimants of the same degree of relationship—Priority.*

In cases of impartible estates the rules of ordinary Hindu Law of succession apply, in the absence of a special custom, subject to such modifications as are inherent in the impartible character of the estate. The first question is whether the propositus was or was not separated from the other members of the family. 42 Cal. 1179, Foll. Where he is joint the estate must be treated as if it had been partible and would therefore be governed by the law of survivorship. But where there are more than one person coming within the rule the nearest coparcener of the senior line and not the nearest in blood will succeed to the propositus in preference. Where, however, he was divided, the estate is to be treated as a separate property and the law relating to separate or self-acquired property will apply and the rule that the nearest in blood excludes the more remote will be applied and on the last case the representative of the senior branch will be preferred where there are persons in the degree of relationship. 20 Cal 649, Foll. (*Wallis, C.J. and Krishnan, J.*) GURUSWAMI PANDIYAN *v.* SEENATI, KALLAI PANDIA CHINNATHAMBI. **39 M.L.J 629 = (1920) M.W.N. 660 = 44 M. 1 = 61 I C. 242 = 28 M.L.T. 365.**

[*See* the same principles stated in 60 I.C. 534 (P.C.)].

———*Impartible estate—Succession—Munagala Zemindari if impartible.*

The Munugala Zemindari in the Kistna District is impartible and the succession is according to the custom of primogeniture. (*Wallis, C.J. and Sadasiva Aiyar, J.*) KEESARA VENKATAPPAYYA *v* NAYANI VENKATARANGA RAO. **43 Mad. 288 = 59 I.C. 978 = 38 M.L J. 149.**

———*Impartible estate—Succession—Illegitimate son—Widow.*

An illegitimate son is postponed to the widow of a deceased holder of an impartible estate, if divided or to the other co-parceners, if there was a joint family. (*Miller and Abdur Rahim, JJ.*) VISVANATHASWAMY NAICKER *v.* KAMUAMMAL. **21 I.C. 724 = 24 M.L J. 271.**

HINDU LAW—Impartible Estate—Succession.

——*Impartible estate—Succession—Partition—Proof of.*

In the absence of evidence to show that the Zamindari fell to the share of a particular branch in division the mere fact that the various co-parceners are in enjoyment of separate properties is not sufficient to show that the Zemindari was divided. Grant of a patta over part of the estate for maintenance followed by complete separation in food and estate is proof of partition. (*Miller and Abdur Rahim*, JJ.) VISVANATHASWAMI NAICKER *v.* KAMU AMMAL. **21 I.C. 724=24 M.L J. 271.**

———*Impartible estate—Succession to.*

A custom of impartibility of estate does not necessarily imply the existence of a custom of descent different from that recognised by the Hindu Law. (*Daniels*, A.J.C.) HAR BAKSH SINGH *v.* NAGINDRA BAHADUR SINGH. **22 O.C. 68=6 O.L J. 266=52 I C. 2=1 U.P.L.R. (J.C.) 74.**

———*Impartible estate—Succession—Order.*

The rules governing succession to a partible estate are to be looked at and the principle of survivorship applied in finding out the succession to an impartible estate. Nearest co-parcener of senior line is preferable to the co-parcener nearest in blood. (*Lindsay, and Stuart*, A.J.Cs.) GHISIA SINGH *v.* GAJRAJ SINGH. **18 O.C. 289=33 I.C. 371=3 O L J. 45.**

———*Impartible estate—Sucession by survivorship—Application for personal decree—Succession certificate if necessary.*

Where a person succeeded to an impartible estate by survivorship and applied for a decree under O. 34, r. 6 of the C. P. Code against another, a succession certificate need not be obtained as a condition precedent to the maintainability of the application. Case-law as to succession in impartible estates considered. (*Das and Adami*, JJ.) SHIVA PRASAD SINGH *v.* BENI MADHAB CHOWDHURY. **1 P. 387=4 P.L.T. 6=1922 P. 529.**

———*Impartible estate—Succession—Origin of the estate—Subsequent dealings—Partition of estate.*

An estate may be the family property of a joint undivided family and yet be impartible. Where the family in question was an ancient and noble one the property had been granted in ancient times by the Moghul Emperor for services, the permanent settlement had been made with the Raja for the time being to the exclusion of his brothers, the repeated succession of the eldest son to the estate though there were many sons left: *Held*, that the estate was impartible and the succession to it went to the eldest male defendant in the senior branch. The mere fact that separate estates have been formed by the division of one entire estate, is not a circumstance which decides the issue in favour of partibility. The impartibility of the estate does not destroy its nature as

HINDU LAW—Joint family.

joint family property or render it the separate property of the last holder unless there was something equivalent to partition. (*Das and Adami*, JJ.) DWARKA PRASAD *v.* JAI BARHAM. **1922 P. 322.**

———*Impartible estate—Succession—Junior members—Right of.*

Junior members have no community of interest with the holder and do not take by survivorship, though they take by the order of succession prevailing in the family. They are not co-parceners but they have only right to maintenance in the family. The junior member may succeed the senior after death. (*Chamier*, C.J., *Chapman and Roe*, JJ.) SHYAM LAL SINGH *v.* BIJAY NARAYAN KUNDU. **2 P.L J. 136=1 P.L.W. 140=39 I C. 36=1917 Pat. 121.**

———*Impartible estate—Succession—Primogeniture and impartibility.*

In the estate of the Maharajah of Chota Nagpur and in his family the existence of the custom of impartibility and primogeniture is established in all cases. (*Atkinson and Jwala Prasad*, JJ.) RAMCHARAN MATHO *v.* HARIHAR MATHO. **35 I.C. 392.**

——*Impartible estate—Succession—Primogeniture—Chota Nagpur—Estates granted by Maharajah.*

Under the custom of primogeniture prevailing in all the estates granted by the Maharajah of Chota Nagpur to his relations, the Bodla Estate in Chota Nagpur descends as an impartible estate to the eldest male heir by lineal descent. (*Chapman and Atkinson*, JJ.) LAL GAJENDRA NATH SAHI DEO *v.* LAL MATHURLAL NATH SAHI DEO. **20 C.W.N. 876=35 I C. 383=1 P.L J. 109.**

Inheritance.

See HINDU LAW—SUCCESSION.

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HINDU LAW—Joint family—Acquisition.

Joint family—Acquisition.

———*Joint family—Acquisition—Property acquired by disposal of ancestral property—Joint family property—Gift of, invalid.*

The widow of A, who had been adopted into another family, made an absolute transfer of properties which A inherited from his adoptive father in favour of B, C and D, the surviving natural brothers of A in consideration of benefits received from the latter's ancestral funds, which was challenged as beyond her competence as a Hindu widow. D conveyed some of the properties which he thus got from A and others which he subsequently bought to his concubines and to a daughter by one of them. After D's death D's son R with whom D lived jointly and R's son claimed these properties as joint family properties which D had no authority to alienate. *Held*, (without deciding whether the alienation by A's widow was valid or not and whether A's property which D got was his ancestral or self-acquired property, but assuming that it was D's self-acquired property) that the evidence showed such blending of this property of D, in which R and his sons as they were born became co-parceners as to make it joint property. As all the properties which were the subject-matter of the deeds of gift were joint properties of D, they did not operate even on the one-sixth share which D might have got by partition of the estate with his co-parceners since D had no separate sixth share and the whole property accrued on his death to surviving members of the family. 40 All. 159, Foll. (*Sir Walter Phillimore.*) RADHA KANT LAL *v.* MUSAMMAT NAZMA BEGUM.

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———*Joint family—Acquisition — Nucleus of ancestral property—Burden of proof.*

When there is a nucleus of joint family property with the assistance of which subsequent acquisitions has been made the burden of proving that any particular property is separate lies on the person who asserts it. Such a nucleus need not be a substantial one but must be yielding some income. (*Lindsay and Daniels*, JJ.) SUKHNANDAN *v.* BRIJNANDAN.

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———*Joint family—Acquisition—Throwing into common stock character of family property determined by intention.*

Members of a joint family may, by their intention expressed in conduct, impress upon any property of which they may be possessed the character of joint family property. Once there is a family chest any contribution or addition to it instantly partakes of its character and cannot be separated. The quantum of contribution made by the several members is immaterial. (*Beaman*, J.) HARI DAS *v.* VELJI CHATURBHUJ. **20 I.C. 476=16 Bom. L.R. 584.**

HINDU LAW—Joint family—Alienation,

———*Joint family—Acquisition—Presumption—Property.*

Where members are living jointly and acquire properties, the presumption is they acquire it for the benefit of the family and the party who denies jointness must rebut the presumption. (*Greaves and Cuming*, JJ.) SOSHI KUMAR SARKHEL *v.* CHANDRA KUMAR CHAUDHURI. **35 C.L.J. 348=1923 Cal. 204.**

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The mere existence of a family nucleus will not impress the acquisitions of a member of the family with the character of joint family property unless it is shown that the acquisitions could have been made from the income derived from that nucleus. Consequently where a member of a joint Hindu family obtained on partition with his brothers properties worth 200 rupees and was allotted debts to the extent of Rs. 500 and he subsequently acquired as *Dubash* (agent) of certain big commercial men, *Held*, that the acquisitions were his own self-acquisitions and that the nucleus did not impress them with the character of joint family property. 27 M.L.J. 677; 33 A. 677, Ref.; 35 All. 564; 27 M. 228; 2 Lah. 40, Ref. (*Spencer and Devadoss*, JJ.) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR.

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———*Joint family—Acquisition — Money spent on litigation as a result of which property was obtained.*

In the absence of anything to show that property acquired as a result of a litigation by a member of a joint Hindu family was thrown into the common stock, it does not become joint family property merely by reason of the fact that the funds of the joint family were spent in the litigation. (*Phillips and Devadoss*, JJ.) CHELLASAMI ATCHAMMA *v.* CHELLASAMI VENKATA SUBAYYA. **16 L.W. 268=(1923) M.W.N. 487=1922 Mad. 423.**

Joint family—Alienation.

———*Joint family — Alienation — Senior brother requiring the deed—If others party.*

Where the senior brother alone enters into a transaction on behalf of a joint family, a presumption can be drawn under S. 114, Evidence Act that the junior member too was a party, though only constructively. (*Hallifax*, A.J.C.) GANIA *v.* GANGA PRASAD. **6 N.L.J. 269.**

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Where a mortgage of joint family property executed by a Hindu father is made for purposes not laid down in Hindu Law the mortgage as such becomes void *ab initio*. (*Simpson*, A. J. C.) UDAIRAJ SINGH *v.* RAMUDIT TEWARI. **10 O.L.J. 376=1924 Oudh 147.**

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HINDU LAW—Joint family—Alienation.

———*Joint family—Alienation—Necessity—Burden of proof—Father setting aside after born son—Rights of.*

The principle that where property has passed out of a joint Hindu family, the burden lies on the plaintiff (son) to prove that the transfer was made for an immoral purpose by the manager of the family applies only where the property has passed out of the family by foreclosure or sale in execution of a decree or where such a decree has been passed and new rights have come into existence. Where there has been a transfer for cash down and the son contests the legality of the sale the onus lies on the vendee to prove the validity of the consideration. Where a Hindu father has alienated ancestral property and where a son who was in existence at the time of the alienation brings a suit to set it aside and before the suit is decided another son is born, such son also acquires a right to set aside the sale. 19 A.L.J. 978, Foll. (*Dalal*, J.C.) JANG BAHADUR SINGH *v.* RANJIT SINGH. **10 O L J 353 = 1924 Oudh 141.**

———*Joint family—Alienatian--When binding—Mortgage—Antecedent debt.*

A mortgage cannot be enforced against joint family property unless it is established that its antecedent debt independent of the mortgage or legal necessity was its consideration. (*Kanhaiya Lal*, J.C.) PRAN *v.* SHEO LAL.
26 O.C. 321 = 1924 Oudh 135.

———*Joint family — Alienation — Setting aside—Rights of members.*

A sale of joint family property having infringed the rights of a single member of a joint Hindu family, he can have the entire sale set aside. Either the vendors were entitled to deal with the joint family property, in which case the alienation is valid or they were not entitled to do so, in which case they cannot alienate even their own share. (*Dalal and Simpson*, A.J.Cs.) DWARKA PRASAD *v.* MT. RAM DEI.
10 O L J. 360 = 1924 Oudh 120.

———*Joint family—Alienation—Execution sale of the interests of a co-parcener—Remedy of other members—Rights of the purchaser.*

Though a creditor of a member of a joint Hindu family can attach and purchase at an execution sale the interest of that member in the family property, it is not open to the creditor to take possession of that interest. He acquires the right to compel a partition but not a right to enter into joint possession with the other members of the family. (*Das and Kulwant Sahay*, JJ.) MEDNI PRASAD SINGH *v.* NAND KESHWAR PRASAD SINGH. **2 P. 386 = 1923 P. 451.**

———*Joint family—Alienation—Manager of joint family—Benefit.*

The test to determine whether a mortgage by the Manager of a joint Hindu family is binding on the family is a real benefit according to the

HINDU LAW—Joint family—Ancestral property.

family and not the legal necessity for the transaction. The Manager has power to do whatever is best for the benefit of all concerned. (*Das and Adami*, JJ.) SHEOTAHAL *v.* ARJUN DAS. **1 P.L T. 136 = 56 I C. 879 = 1920 Pat. 155.**

Joint family—Ancestral property.

———*Joint family—Ancestral property—Inherited from mother—Joint tenancy—Tenancy-in-common.*

A joint tenancy is created where property is inherited by unobstructed succession called rikhta. In such a case the heirs take the property as co-parceners. Absolute property of the mother devolves on the sons not as joint tenants but as tenants-in-common. A tenancy in-common is created where property is inherited by obstructed succession. In this case the idea of inheritance and the idea of partition go together; one is a necessary complement of the other, so that, at the very moment the inheritance falls in the heirs takes by partition that is, as owners of defined shares and therefore, as tenants-in-common. Heritage in the case of stridhan is obstructed succession. (*Chandavarkar and Russel*, JJ.) BAI PARSON *v.* BAI SOMLI. **36 Bom. 424 = 16 I.C. 774 = 14 Bom. L.R. 400.**

———*Joint family—Ancestral property—Grant for maintenance.*

A portion of an impartible estate granted by the holder thereof to his younger son for maintenance, is ancestral in the latter's hands and cannot be capriciously alienated by him to the detriment of his sons. (*Mookerjee and Beachcroft*, JJ). HAZARIMALL *v.* ABANINATH **17 C.L.J. 38 = 18 I C. 625 = 17 C.W.N. 280.**

———*Joint family—Ancestral property—Through whom derived.*

Property does not cease to be ancestral because it is derived through the mother. (*Abdul Raoof and Bevan-Pelman*, JJ.) SUHIVA *v.* DEVI DIAL. **70 I.C 1002 = 4 L.L.J. 516.**

———*Joint family — Ancestral property—Abandonment and reacquisition—Effect.*

If the inhabitants of a village leave the village abadi and the land passes out of cultivation and later on, some of them or their descendants come back, they reacquire the land cultivated by them and do not require it as ancestral property. (*Scott Smith and Abdul Qadir*, JJ.) MANOHAR *v.* NANHI. **66 I.C, 399 = 2 L. 366.**

———*Joint family—Ancestral property.*

Property acquired out of income of ancestral property must be considered as ancestral property according to Hindu Law. (*Rattigan and Leslie Jones*, JJ.) BUDHA RAM *v.* MUHAMMAD DIN. **86 P R. 1915 = 196 P.L R. 1915 = 32 I C. 315 = 165 P.W.R. 1915.**

HINDU LAW—Joint family—Ancestral property.

———*—Joint family — Ancestral property— Bequest by ancestor.*

Property derived from an ancestor but which is divided among co-parceners neither according to Hindu Law, custom or according to the terms of the will left by the ancestor, is ancestral property. (*Johnstone and Ratligan*, JJ). SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD., LAHORE. **110 P.W.R. 1914 = 3 P.R. 1915 = 23 I.C. 430 = 215 P.L.R. 1914.**

———*—Joint family—Ancestral property.*

Ancestral property in Hindu Law is confined to property which has been derived from certain male lineal ancestors as enumerated in the Text books. (*Kensington*, C J. *and Shah Din*, J.) KARAM CHAND *v.* JAI RAM. **224 P.L.R. 1914 = 124 P.W.R. 1914 = 24 I.C. 928 = 92 P.R. 1914.**

———*—Joint family — Ancestral property— Right by birth—Punjab.*

The Mitakshara doctrine of a son being born with a share in a joint family is unknown in the Punjab. 90 P.R. 1892; 105 P. R. 1895 and 113 P.R. 1886, Foll. (*Shah Din and Beadon*, JJ.) TULSI RAM *v.* SHIB DAS. **6 P.R. 1913 = 19 I.C. 11 = 228 P.L.R. 1913.**

———*—Joint family — Ancestral property— Bequest by father in favour of son.*

Where a Hindu father bequeathes his self-acquired properties to his son by will, the question whether the son takes it as ancestral or self-acquired property is one of intention turning upon the construction of the instrument, the presumption being that the property is to be held by the son as ancestral. The omission to mention the names of the grandsons, is immaterial. 3 M. H. C. R. 50 and I. L. R. 24 Mad. 429, Foll. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITAJI *v.* KOTHAPALLI RAMA CHARLU. **54 I.C. 146 = 10 L.W. 498.**

———*—Joint family—Ancestral property— Maintenance grant.*

Property given for maintenance to the illegitimate son of an undivided co-parcener is not ancestral property of the illegitimate son; the son of the illegitimate son gets no right by birth in it. 24 Mad. 429; 17 O.L.J 38, Dist. (*Sadasiva Iyer and Napier*, JJ.) KRISHNASWAMI NAIDU *v.* SEETHALAKSHMI AMMAL. **39 Mad. 1029 = 18 M.L.T. 513 = 31 I C 803 = 3 L.W. 317.**

———*—Joint family— Ancestral property— Inheritance from maternal grandfather.*

According to the Mitakshara Law the property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons takes an interest at

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birth. 27 Mad. 382; 34 Mad. 211, Foll.; 25 Mad. 678, Ref.; 35 Cal. 1039, Dist. (*Spencer and Coutts-Trotter*, JJ.) KARRI RAMMAYYA *v.* VILLORI JAGANNADHAM **39 Mad. 930 = 18 M.L.T. 360 = 2 L.W. 874 = 30 I C 889 = (1915) M.W.N. 838.**

———*—Joint family—Ancestral property — Bequest by father to son—Construction.*

Whether property bequeathed by father to son is to be taken absolutely or with incidents of ancestral property is a question to be determined by ascertaining the intentions of the testator from the words of the will. In the absence of intention to the contrary, it must be presumed that the father intended the sons to take the property as ancestral property. 24 Mad. 429, Foll. (*Kumaraswami Sastri*, J.) NAIDU *v.* NAIDU. **30 I.C. 272 = 18 M.L.T. 129.**

———*—Joint family—Ancestral property — Bequest by father.*

Where a family is joint and continues to be joint after the death of the testator, the property obtained by his sons and grand sons under the will is joint property unless there is a contrary intention expressed in the will., 24 Mad. 429, Ref.; 24 Mad. 429, Rel. on. (*Kumaraswamy Sastri*, J.) VENKKTARAMIAH PANTULU *v.* SUBRAMANIAM. **26 I.C. 393 = 16 M.L.T. 489.**

———*—Joint family—Ancestral property — Self-acquired—Distinction not known in ancient Hindu Law—"Paternal estate"—Meaning of.*

Per *Sadasiva Aiyar*, J.—The distinction between "ancestral" and "self-acquired" property of a father was not known in ancient Hindu Law. "Paternal estate" in Hindu Law books meant not the father's self-acquisition alone but merely the estate which the son inherited "through his relation as such son" to his father. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SRINIVASA AIYANGAR *v.* THIRUVENGADATHAIYANGAR. **25 M L J. 644 = (1913) M W.N. 1031 = 15 M.L.T 307 = 23 I.C. 264 = (1914) M.W.N. 282.**

———*—Joint family—Ancestral property — Inheritance from collaterals.*

Under Hindu Law property inherited from a collateral is not ancestral. (*Lindsay*, J.C.) PUDAI RAM *v.* BAKJANATH LAL. **23 O.C. 264 = 56 I.C. 743 = 7 O.L.J. 273.**

———*—Joint family—Ancestral property—Inherited property.*

Self-acquired estate descending from father to sons is joint ancestral estate in their hands. (*Lindsay*, J.C.) ACHHABIR SINGH *v.* JANG BAHADUR SINGH. **48 I.C. 901 = 3 O.L.J. 687.**

———*—Joint family—Ancestral property — Bequest by father.*

Property bequeathed by father to a son is not joint family property. 14 O C. 244, Foll. (*Stuart*, A.J.C.) JADUNATH SINGH *v.* BHABHUTI PRASAD. **33 I.C. 785 = 3 O.L.J 29.**

HINDU LAW—Joint family—Ancestral property.

———*Joint family— Ancestral property— Collateral succession.*

Where a joint family inherits enoumbered property from a collateral, the mere fact that the enoumbrance is paid off out of the joint family funds does not show that the property is acquired from such funds and the mere fact that the property is managed by the managing member of the family does not establish whether it is or is not treated as joint family property. Where the property is not self-acquired but inherited by the members of a joint Hindu family governed by the Mitakshara Law, and is such as could have been partitioned among them at the time that it was inherited, the rule of survivorship applies irrespective of the fact whether such property came by obstructed or unobstructed inheritance, *i e.*, whether it was inherited from a direct ancestor or from a collateral. (*Stuart and Kanhaiya Lal*, A.J. Cs.) SURAJ BAKSH *v.* SUKDEI. **32 I.C. 291= 2 O.L.J. 502.**

———*Joint family—Ancestral property— Father's self-acquisition.*

The self-acquired property of a member of a joint Hindu family without exercising his powers of disposal over it passes to his sons as ancestral property. The mere fact that he has not availed himself of the power of disposal is an indication that he treated it as joint family property. (*Evans*, J.C. *and Lindsay*, A.J. C.) RAMESHAR *v.* RUKMIN. **12 I.C. 770= 14 O.C. 244.**

Joint family—Constitution of.

———*Joint family—Constitution of--Tenancy in-common.*

When a Hindu female and a male jointly acquire property, they take it as tenants-in common and not as joint tenants. Thus they cannot form a joint Hindu family in the technical sense. (*Abdur Rahim and Srinivasa Iyengar*, JJ). VEERARAGAVA REDDI *v.* KOTA REDDI. **31 M.L.J. 465= 20 M.L.T. 348=38 I.C. 532= 3 L.W. 422.**

Joint family—Dancing Girls.

———*Joint family—Dancing girls—Joint property.*

The ordinary presumption that property standing in the name of one co-parcener is the property of all does not apply to dancing girls. (*Sadasiva Aiyar and Napier*, JJ.) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. **29 I.C. 975.**

Joint family—Debts.

See also HINDU LAW—(1) ALIENATION, (2) DEBTS.

Joint family—Exclusion.

———*Joint family — Exclusion — Mesne profits.*

Where owing to differences on religious matters between two brothers who formed a joint Hindu family the junior brother lived separately but was offered a decent allowance by the senior which he refused to accept as being inadequate. *Held*, that there was no exclusion if the junior brother from the joint family and that he was not entitled to claim mesne profits for the period in question from the senior brother. (*Mr. Ameer Ali.*) SURAJ NARAIN *v.* IQBAL NARAIN. **35 All. 80= 40 I.A. 40=13 M.L.T. 194=17 C.W.N. 333= 11 A.L.J. 172=(1913) M.W.N. 183= 17 C.L.J. 288=24 M.L.J. 346= 15 Bom. L.R. 456=18 I.C. 30= 16 O.C. 129 (P.C.).**

———*Joint family—Exclusion—Leprosy—Father—Dealing with his own property or ancestral property for legal necessity.*

There is no prinoiple of Hindu Law under which a leper is disqualified from dealing with his own property or from dealing with joint family property so as to bind his sons, provided the alienation is made for legal necessity. (*Piggott and Walsh*, JJ.) MAN SINGH *v.* MUSSAMMAT GAINI. **40 All. 77= 43 I.C. 62=18 A.L.J. 860.**

———*Joint family—Exclusion—Co-parcener—Exclusion, when complete.*

A member of a joint Hindu family who was refused partition of his share and remained out of possession without receiving any profits for over 12 years was held exoluded from joint family property. (*Sadasiva Iyer and Hannay*, JJ.) SINNASAMY GOUNDAN *v.* SUBBANAN GOUNDAN. **26 I.C. 901=(1915) M.W.N. 29.**

———*Joint family — Exclusion—Holding belonging to family—Co-parcener's right—Non-participation in cultivation and profits—Whether extinguished.*

The mere fact of a co-parcener not taking a part in cultivation or on payment of rent or receipts of profits, for more than 12 years does not extinguish his interest in the holding unless he ceases to be a member of the joint family. (*Hallifax*, A.J.C.) SULKA *v.* RAKHI. **37 I.C. 339.**

———*Joint family—Exclusion — Suit by member for possession from another—Mesne profits.*

Where a member of a joint Hindu family sues for the recovery of family property from another member claiming to hold it adversely, the plff. is entitled to a decree for joint possession of an undivided share but not to mesne profits. (*Daniels*, A.J.C.) GOKUL PRASAD *v.* KAILASH NATH. **4 U.P.L.R. (J.C.) 19= 8 O.L.J. 596=1922 Oudh 55.**

———*Joint family—Exclusion—Partition.*

A person living apart from his step-brother the manager of the estate for nine years in mess, allowed the property to remain joint. He brought a suit for partition impleading the step-brother and his transferees as defts. *Held*, the plaintiff's suit being for a *de facto* and *de jure* division he could not rely on the ordinary presumption of jointness. The plaintiff to

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succeed in ejecting the appellant transferee from his possession must prove his title independently of presumption as the transferee was altogether a stranger to the family and in the possession of the property in dispute. The property in dispute was separate self-acquisition of the step-brother after their division; and the plaintiff could claim no title to it. (*Hason*, A.J.C.) SHEO DAYAL *v.* LALTA PRASAD.

23 O.C. 184=58 I C. 608=7 O.L.J. 565.

Joint family—Family property.

———*Joint family--Family property--Blending of ancestral and self-acquired property.*

Self-acquired property may be converted into ancestral property by the member of the Hindu joint family by throwing it into the common stock. This has to be decided from the facts of each case. (*Sir Walter Phillimore*). RADHAUNTALAL *v.* NAZINA BEGUM.

45 Cal. 733=22 C.W.N. 649=22 C.L J. 632=16 A.L J. 537=5 Pat. L W. 72=23 M.L.T. 393=(1918) M W N. 386=35 M L J 99=45 I C. 805=20 Bom. L.R. 724 (P.C.).

———*Joint family—Family property—Acquisitions—Gift by Manager—Effect of.*

In a joint Hindu family it is possible that a member of the family should make separate acquisition, and keep moneys and property so acquired as his separate property, but the question whether he has done so is to be judged from all the circumstances of the case. 34 I A. 65, Ref. Though the manager of a joint Hindu family systematically mixed his professional earnings with receipts from the joint family properties in his accounts, and purchases by him in the name of himself or his brother are to be regarded as joint family property, it is still competent to him to make a gift out of his earnings to his own son-in-law though they have been brought into the account. A statement by the manager during his lifetime that he brought the properties as a provision for his son-in-law is an admission under S. 32 (3) of the Evidence Act and coupled with the other evidence as to the intention of the Manager, is sufficient to defeat a claim that the property was bought in the name of the son-in-law *Benami* for the joint family. (*Lord Buckmaster.*) SURAJ NARAIN *v.* RATAN LAL.

40 All. 159=21 C.W.N. 1065=20 O.C. 211=2 Pat. L.W. 160=33 M.L J. 180=15 A.L J. 681=19 Bom. L.R. 737=22 M.L.T. 121=26 C.L.J. 267=6 L.W. 509=(1917) M W N. 477=4 O.L J 762=40 I.C. 988=44 I.A. 201 (P.C.).

———*Joint family — Family property — Acquisitions—Source of payment of purchase-money.*

In determining whether property which stands in the name of a junior member is his self-acquisition the source from which the money, with which the purchase-money was paid comes is the criterion. Unless there is evidence to prove that the property was purchased with the money of the junior member, the presumption is that the property acquired by the head of the family in the name of his son is joint family property. 3 M. I. A. 229; 6 M. I. A. 53. (*Mr. Ameer Ali*) PARBATI DASI *v.* BAIKUNTHA NATH DAS.

15 M.L.T. 66=(1914) M W N. 42=12 A.L J. 79=19 C.L J. 129=18 C.W.N. 428=16 Bom. L R. 101=22 I.C. 51=26 M.L J. 248 (P.C.).

———*Joint family — Family property — Throwing into the common stock.*

Property granted to a person by the Government as a reward for his services is self-acquired property. But it might become the property of the joint family if it is thrown into the common stock and the income of the whole of the property is devoted to the expenditure of the family, one account being kept of the income from the self-acquired and the ancestral property. (*Sir John Edge.*) INDAR SHAI *v.* SHIAM BAHADUR.

13 M.L T. 155=(1913) M.W.N. 122=15 Bom. L R. 418=25 M.L J. 57=17 C.L.J. 299=17 I C. 760=17 C.W.N. 509 (P.C.).

———*Joint family—Family property—Presumption—Mortgage in favour of member.*

The presumption as regards a mortgage got by a member is that the funds belong to the family. (*Richards*, C. J. *and Banerji*, J.) PUNNU *v.* KOUSA. **40 I.C. 463.**

———*Joint family — Family property — Grant by Government.*

Joint family property confiscated by Government and subsequently regranted to one co-parcener without reference to original grant must be presumed to be joint family property. (*Richards*, C.J. *and Rafique*, JJ.) BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH.

38 All. 590=38 I.C. 894=14 A.L J. 913.

———*Joint family — Family property — Course of conduct.*

Purchase by a co-parcener of a property on behalf of the family and treatment of it as joint family property makes it the property of the family. (*Banerjea and Chamier*, JJ.) SHIAM SUNDER LAL *v.* BUDDHU LAL.

24 I.C. 252=12 A.L.J. 794.

———*Joint family — Family property—Acquisitions—Presumption.*

Where in a joint Hindu family property is purchased in the name of one individual there is no presumption that it is his separate property. The onus is on the person alleging it to be a self-acquisition to prove it. Unless the contrary is proved the presumption is that property purchased by a father in the name of the sons was purchased out of the funds of the joint family. (*Richards*, C. J. *and Piggott*, J.) KUNDAN LAL *v.* SHANKAR LAL.

35 All. 564=21 I.C. 13=11 A.L J. 910.

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———*Joint family — Family property — Possession of—Widow of co-parceners — Joint interest.*

In a joint Hindu family all property is presumed to be held jointly no matter whose name appears in the Revenue Records. Where two brothers were joint their widows also must be presumed to be in joint possession of the property. No question of adverse possession arises in such a case. (*Griffin*, J.) SRI CHAND *v.* SURAJ KUAR. **9 I C. 146**

———*Joint family — Family property—Throwing into common stock.*

Where a member of a joint Hindu family converts his self-acquisition into joint family property, all members of the family have the same right in it as in ancestral property. (*Beaman and Heaton*, JJ.) RANGBHAT RAMACHANDRA DHAT *v.* SITABAI BAND BHAT. **43 I.C. 584=20 Bom. L.R. 388.**

———*Joint family—Family property—Joint acquisitions—Proof.*

Where father and son live together and where Hindu brothers live together as joint family work together and acquire property together it has the character of joint family property irrespective of nucleus. The point of nicety in determining when the common family fund becomes impressed with that character is to discover the intention of the person having the control of the fund that it should be appropriated to the common use. Where a Hindu father starts with nothing the mere fact that there are infant children does not lead to the conclusion that his individual earnings should become a common fund. Where the children grow up it becomes difficult to determine when the acquisitions of the one fund become acquisitions of the other. The test to determine when self-acquisitions become joint family property is contribution. (*Beaman*, J.) HARI DAS LALGI *v* NAROLAM RAGHAVJI. **14 I.C. 769=14 Bom. L.R. 257.**

———*Joint family—Family property—Properties in possession of one member—Presumption—Transferee from members.*

A transferee from a member of a joint Hindu family of property, must show that the property was the separate property of his vendor, although there was no nucleus of ancestral joint family property. The presumption that property standing in the name and in the possession of a member of a joint Hindu family is joint family property would arise even where there was in fact no nucleus of ancestral joint family property. 19 W.R. 178; 10 W.R. 122, Rel. (*Teunon and Walmsley*, JJ.) GADHARBHATAK *v.* SATISH CHANDRA GHOSE. **51 I.C 854.**

———*Joint family—Family property—Property in the hands of one member—Presumption.*

Where it is proved that there was a nucleus of joint family property, any property in the hands of a member of such family must be presumed to be family property. 30 Cal. 231, Ref. to. (*Carnduff*, J.) GANPATI *v.* BALAMUKUND. **13 I.C. 206.**

———*Joint family—Family property—Onus of proof.*

Where separation is proved the onus is shifted on the plaintiff who asserts jointness of proving that the house is joint property. (*Campbell*, J.) NARSINGH DAS *v.* UTTAM CHAND. **1923 Lah. 392.**

———*Joint family—Family property—Question of status—Burden of proof.*

An agreement of family settlement was followed by an arbitration award and the award was duly registered: Under the award the house in dispute was assigned to the widows of one of the brothers. *Held*, the onus was shifted on to the plaintiffs' reversioners to prove that the property was joint Hindu family property at the time of alienation of the house in question by widow. A decree for maintenance against the male members of the family on the ground that the widow was entitled to be maintained out of her husband's share of the joint property does not help the plaintiffs to prove that there was any joint Hindu family. The house in suit might very well be joint family property without the family being joint in the true sense. (*Scott Smith and Motisagar*, JJ.) KARAM CHAND *v.* MT. HAR KUAR. **1923 Lah. 371.**

———*Joint family—Family property—Onus of proof.*

All the property in the hands of the members of a joint Hindu family is to be treated as joint property but it is open to any other member to show that any particular property is his separate property. (*Shadi Lal*, C.J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARAN DAS. **2 Lah. 69=21 P L R. 1921=59 I.C. 236=15 P.W.R. 1921.**

———*Joint family — Family property — Acquisition by member—Presumption—Plea of self-acquisition—Onus.*

The legal presumption is that all the properties held by any member of a joint family so long as the family is joint are joint properties. Joint acquisitions made by the several members in a joint family, while the family is joint are presumed to have been made from joint funds and belong to the joint family. The mere fact that any particular acquisition is in the name of a member of the joint family, does not warrant the assumption that it is the exclusive acquisition of the member of the named and not of the whole joint family. (*Broadway*, J.) GOPAL SHAH *v.* JAWAND SINGH. **49 I.C. 1007=30 W.R. 1919.**

———*Joint family—Family property—Purchase by father in son's name.*

Purchase by a Hindu father in the name of the son does not denote advancement but that

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it is *benami*. 6 M.I.A. 53; 13 M.I.A. 232 and 13 W.R. (P.C.) 1. Ref. (*Scott-Smith and Shadi Lal*, JJ.) GHULAM DASTAGIR *v.* TEJA SINGH. **73 P.R. 1918=47 I.C. 867=169 P.W.R. 1918.**

———*Joint family—Family property—Purchase in minor son's name—Advancement—Property in the son's hands not ancestral.*

When land is purchased by a father in the name of his minor son, to make an advancement of the purchase money to the son, such property in the hands of the son is not ancestral property. (*Shah Din and Chevis*, JJ.) NATHA MAL *v.* JIWAN RAM. **33 I.C. 793=77 P.W.R. 1916.**

———*Joint family—Family property—Reversion—Maintenance grant.*

Property allotted to a widow for maintenance continues to be joint family property. (*Ratligan and Jones*, JJ.) CHANDAM MAL *v.* MUSAMMAT WASINDI BAI. **92 P.R. 1916=31 I.C. 641=168 P.W.R. 1916.**

———*Joint family — Family property — Acquisition—Presumption.*

The normal state of a Hindu family is joint and an acquisition in the name of any one member does not warrant the assumption that it is his exclusive acquisition. (*Shah Din and Scott-Smith*, JJ.) SHAM DAS *v.* POHLO RAM. **18 P.W.R. 1913=18 I.C. 604=16 P.L.R. 1912. (Supp.)**

———*Joint family — Family property — Benami purchase—Burden of proof.*

Where the head of a joint Hindu family makes a purchase in the name of another member the onus of proving the purchase was not *benami* lies on the person asserting it. (6 M.I.A. 53, Foll.) The onus may, however, be shifted in particular cases. Thus where the transaction is shown to be in the nature of a distribution among various members or for the advancement in life of one of them the initial presumption may cease to exist. (13 M.I.A. 395, Ref.) (*Reid*, C.J. *and Robertson*, J.) RAJA RAM *v.* FATTEH CHAND. **187 P.L.R. 1913=17 I.C. 216=248 P.W.R. 1912.**

———*Joint family — Family property — Throwing into the common stock—Registration.*

Semble.—Where a divided member of a joint family throws his properties into the common stock so as to make it joint family property of a reunited family, a registered instrument is necessary to validate it. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) REDDI *v.* REDDI. **8 L.W. 400=47 I.C. 716=(1918) M.W.N. 680.**

———*Joint family — Family property — Throwing into Common Stock.*

Blending private earnings with receipt of joint family shows an intention to make them joint property. Self-acquisition may be converted into joint family property (1) clear declaration to that effect, (2) substantial contribution being made by the sons, (3) unequivocal conduct showing that the son was treated as equal owner. If father and son trading together the presumption is that the earnings become joint family property. (*Sadasiva Iyer and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA. **38 I.C. 244.**

———*Joint family — Family property — Throwing into Common Stock.*

The earnings of one member of a joint Hindu family do not necessarily belong to the family in the absence of any evidence that they were thrown into the common stock or that they were jointly made by all members of the family. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) YECHURI RAMA MURTHI *v.* YECHURI RAMAMMA. **30 M.L.J. 308=33 I.C. 961=3 L.W. 322.**

———*Joint family — Family property—Throwing into common stock.*

Per Coutts Trotter, J.:—If a man has property which he has acquired by his own exertions but shows by his subsequent conduct and subsequent dealings with that property that his intention was that it should be regarded, and he himself regards it, as being property in which his family has a share, then that becomes thence forward, family property under the Hindu Law. 10 M.I.A. 490; 25 Mad. 149; 10 Bom. L.R. 175; 15 Bom. L.R. 584; 32 Bom. 479; 17 I.C. 347 Foll. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) TAYALAMBAL *v* KRISHNA PATTAR. **32 I.C. 955.**

———*Joint family — Family property — Presumption.*

Even if the property is purchased without the aid of joint family funds, acquisitions in the absence of intention to the contrary be treated as joint family property. (*Ayling and Tyabji*, JJ.) MUTHAN *v.* PUNIAKOTTI MUDALIAR. **31 I.C. 18.**

———*Joint family — Family property — Dancing Girls.*

The ordinary presumption that property standing in the name of one co-parcener is the property of all does not apply to dancing girls. (*Sadasiva Iyer and Napier*, JJ.) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. **29 I.C. 974.**

———*Joint family—Family property—Inam Desai—Grant of—Joint Hindu family.*

The presumption is that a Desai Inam devolves to the benefit of all the members of a joint undivided Hindu family where it devolves on the managing member for the time being. 26 Mad. 339, Foll. (*Seshagiri Iyer and Kumaraswami Sastri*, JJ.) NANJUNDIAH *v.* VENKATASUBBAYA. **1 L.W 670=16 M.L.T. 239=26 I.C. 87=27 M.L.J. 618.**

———*Joint family — Family property — Acquisitions—Nucleus—Onus.*

Where there is a substantial nucleus of family property of which the father was the

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Manager, the onus would lie on those who assert that any property afterwards acquired was without detriment to that property and was his self-acquisition. (*Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUBBA NAIDU *v.* VENKATTA RAMA NAIDU. **23 I C. 528 = 16 M.L.T. 418.**

———*Joint family — Family property—Insurance—Premia paid by joint family.*

Where the premia are paid out of the joint family funds the amount recovered is joint family property though the policy is taken for the benefit of the wife and children. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SRINIVASA IYENGAR *v.* THIRUVENGADATHAYYANGAR. **38 Mad. 556 = 25 M L J. 614 = (1913) M W N. 1034 = 15 M L.T. 307 = 23 I.C. 264 = (1914) M.W.N. 282.**

———*Joint family — Family property — Presumption.*

If the members of a Hindu family live together, work together, throw their earnings into a common stock the presumption is they must have intended the property to be joint family property and on a partition the share of each is joint family property in which his son acquires a right by birth. (*Bakewell*, J.) MADAVAIYA CHETTY *v.* DAMODARAM. **12 M.L T. 240 = 17 I.C. 347 = (1912) M.W.N. 972.**

———*Joint family — Family property — Transfer of name in khata.*

Merely from a transfer of khata from the name of the father in a joint family to that of one of the sons no presumption arisee that the subject of the transfer has ceased to be joint family property and become the self-acquisition of that particular member. There may be circumstances which indicate that the property was intended to be made the separate property of the son. (*Kotwal*, A.J.C.) MT. KASHI *v.* PANDURANG. **1923 Nag. 75.**

———*Joint family—Family property — Acquisitions by members.*

Where property is acquired jointly by the members of a family, the property so acquired is presumed to be co-parcenary property. 25 Mad. 149, Foll. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) MUSSAMMAT ZUNKERI. *v.* BUDHAMMAL. **57 I C. 252.**

———*Joint family—Family property— Purchase in name of one member—Effect of.*

A purchase in the name of a member of a joint Hindu family is a *benami* transaction especially when he is not the Manager. The property is joint family property. (*Mitra*, A.J.C.) NARAHAR *v.* NARAIN. **56 I.C. 386.**

———*Joint family—Family property—Acquisition—Nucleus of ancestral property—Acquisitions kept separate, proof of.*

The presumption of jointness in respect of property acquired by each member of a joint

HINDU LAW—Joint family—Family property.

Hindu family having an original nucleus is not rebutted by the fact that the ancestral assets were small in proportion to the value of the subsequent acquisitions. Though it is possible that a member of a joint family could make separate acquisitions and keep the money and property separate yet the question whether he has done so is to be judged from all the circumstances of the case. 40 All. 159 (P.C.), Foll. (*Drake Brockman*, J.C. *and Button*, A.J.C.) KRISHNAJI *v.* PARAMANAND. **49 I.C. 240.**

———*Joint family—Family property—Property in the name of a member.*

Property in the hands of and dealt with by one member cannot be presumed to be part of joint family property unless it is proved that it belonged or purchased out of joint family funds. (*Stuart and Kanhaiya Lal*, A. J. C.) IKBAL NARAIN *v.* RAJENDEA NARAIN. **21 O.C. 276 = 48 I.C. 767 = 3 O.L.J. 701.**

———*Joint family — Family property — Acquisition of co-parcener.*

There is no presumption that acquisition in the name of one co-parcener is his separate property. But the presumption is that it was acquired out of joint family funds. (*Stuart and Kanhaiya Lal*, A. J. CS.) LALJAGAN *v.* MATHURA PRASAD. **39 I.C. 498.**

———*Joint family—Family property—Presumption.*

There is no presumption that property belonging to a member of joint Hindu family is necessarily joint ancestral property. (14 O. C. 244, Ref.) (*Stuart*, A.J.C.) JADUNATH SINGH *v.* BHABHUTI. **33 I.C. 783 = 3 O L.J. 29.**

———*Joint family — Family property—Money advanced by one member—Presumption.*

Where money is advanced by a member of a joint Hindu family, the presumption is that it is adavnced from the family funds. (*Lindsay*, A.J.C.) SYED MUHAMMAD HADI *v.* MUSSAMMAT PARBATI. **18 I.C. 228.**

———*Joint family — Family property — Acquisition by female—Presumption.*

Where a property is acquired by a lady whose husband is a member of a joint family for her own benefit and her children, the acquisition cannot be presumed to be for the benefit of the entire joint family. (*Das*, J.) SHIVA NARAIN RAM *v.* PHULJHARIA. **32 I.C. 402.**

———*Joint family — Family property — Acquisitions—Dealings—Presumption.*

When the head of the joint family collects money due on family bonds and issues again on fresh loans the presumption is that both the transactions are for the family. A purchase made by the Kartha of a joint family from joint funds in his own name is joint family property. (*Ros and Coutts*, JJ.) KAMALESHRI PRASAD SINGH *v.* RAGHIBANS PRASAD SINGH. **48 I.C. 949 = 1919 Pat. 62**

HINDU LAW — Joint family—Family property.

———*Joint family — Family property — Acquisition by one member—Presumption.*

There is no presumption that property acquired in the name of one member of a joint family is his separate property. (*Miller*, C.J. *and Ali Imam*, J.) RAMDAYAL MAHTO *v.* UTTIM MAHTO. **46 I.C. 255=5 P.L.W. 122.**

———*Joint family — Family property — Manager—Lease.*

Where a father in a joint Mitakshara family takes a sub-lease the presumption is that it was taken for the benefit of the joint family. (*Roe and Jwala Prasad*, JJ.) KAILASPATI CHAUDHURY *v.* MUNESHWAR. **3 P.L.J 576= 43 I.C. 965=4 P.L.W. 109.**

———*Joint family — Family property — Throwing into common stock.*

Acquisition by co-parceners does not become joint family property in the absence of evidence that the money was thrown into the common fund. Mere living together is not such evidence. (*Mullick and Atkinson*, JJ.) TAJMULALI *v.* JAG MOHAN DAS. **1 P.L.J. 529=38 I.C. 96= 2 P.L.W 444.**

———*Joint family—Family property—Property thrown into common stock—Survivorship.*

Under Hindu Law, property jointly acquired and thrown into common stock is subject to succession by survivorship as between the parties who acquired it. (*Mullick*, J.) GOBARDAN SAHU *v.* BULKHAN MAHTON. **36 I.C. 263= 1 P.L.J. 195.**

Joint Family—Father.

———*Joint family—Father—Compromise by —How far binding.*

One Rajaram's share was decreed in a partition suit along with a considerable amount. Rajaram's minor son was a party to the partition suit. Rajaram released the right to the sum, on his opponent Tuljaram agreeing not to prosecute the appeal against the partition decree. The appeal was therefore not prosecuted. The minor son of Rajaram on attaining majority filed a suit for recovering the sums which was dismissed by both the Courts in India but the Privy Council remanded his suit for trial holding that the arrangement by Rajaram did not bind Rajaram's son. Before the suit came on for trial Rajaram got two more sons who were added as co-defendants. The new-born sons pleaded that the arrangement by Rajaram failed wholly. *Held*, that the agreement did not purport to be a release of individual rights or shares in the fund at all; it did not purport to effect any division of the joint family estate that then existed between Rajaram and his son in the subject-matter of these decrees. On the contrary what it purported to do was to release the whole of the debts that were then owing to the joint family in consideration of Tuljaram not prosecuting his appeals. The attempted arrangement failed so far as the infant was concerned; and, if it failed so far as the infant was concerned, in the events that have happened it must also be regarded as failing (*Lord Buckmaster*). T. R. VENKATA RAO *alias* GANESH RAO *v.* T. V. TULJARAM RAO. **43 Mad 298= 43 M.L.J. 298=26 C W N 646= 36 C.L.J. 319=(1922) M W N. 392= L.R. 3 P.C. 128=4 U.P.L R. P C.) 33= 20 A.L.J. 833=24 Bom. L R 1191= 49 I.A. 91=30 M L T. 272= 1922 P.C. 69 (P.C.).**

HINDU LAW—Joint family—Father.

———*Joint family—Father—Power of, to partition.*

A Hindu father has power to effect a fair partition among his sons. But if he gives away property to a stranger the sons will not be bound thereby. (*Sir Samuel Griffith*) RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHPAL. **40 Cal. 966=40 I.A. 213= (1913) M.W.N. 661=14 M L T. 163= 17 C.W.N. 1189=18 C.L.J. 287= 15 Bom. L.R. 867=11 A L.J. 863= 25 M.L J. 512=20 I C. 958= 10 N.L R. 1 (P.C.).**

———*Joint family—Father—Power to partition.*

A Hindu father has no right to make a partition by will at any rate without the consent of the various members. (*Lord Moulton*). BRIJ RAJSINGH *v.* SHEO DAMSINGH. **35 All. 337=25 M L T 188=17 C W.N 949= (1913) M.W.N. 515=11 A.L.J 698= 14 M.L.T. 11=18 C.L J. 57= 15 Bom. L.R. 652=19 I C. 826= 40 I.A. 161 (P.C.).**

———*Joint family—Father—Revival of time barred debt.*

The father of the joint family cannot revive a barred debt and bind the family property to secure its payment. (*Richards*, C.J. *and Banerji*, J.) DALIP SINGH *v.* KUNDAN LAL. **35 All. 207=18 I.C. 726=11 A.L.J. 244.**

———*Joint family—Father—Representation in suit—Sale in execution of decree—Son minor, not party to the mortgage—Right of son's widow to impeach the sale.*

A father executed a mortgage of joint family property and a decree was obtained on it. Property was sold; the minor son who was not a party to the suit died and his widow brought a suit to challenge the sale of her husband's share. The widow was held not entitled to do so. (*Richards*, C.J. *and Banerji*, J.) SOHNI *v.* MOHAN KUER. **13 I C. 944=9 A.L.J. 23.**

———*Joint family—Father—Decree against —Mortgage—Son's interest whether passes.*

Unless the sons can show that the alienation by father was not binding on them or the debt was not binding, a decree against father will pass the interest of sons also in the joint family property. (*Macleod*, C. J. *and Crump*, J.) DADA JINAPPA *v.* YESU SAKHOBA. **1923 B. 450=25 Bom. L.R. 494.**

HINDU LAW — Joint family — Manager— Bond in favour of.

family is joint family property and it is for those who assert the contrary to make good their case. Proof that some of the members of the family had some private transaction does not prove that the particular bond in question was the private property of the member in whose name it was held. (*Viscount Cave.*) BANDHU RAM *v.* CHINTAMAN SINGH.

26 C.W.N. 406=3 Pat. L.T. 295= 20 A.L.J. 495=1922 P.C. 215.

——*Joint family — Manager—Bond in favour of—Payments to other members if a valid discharge.*

When a contract is entered into by a Manager of the joint family no other member of the family is competent to interfere or to give receipts in connection therewith. But the payment by a debtor who has executed a bond in favour of a manager to the other members of the family under the *bona fide* belief that the contract is with all the members should be given credit to. (*Rattigan and Shah Din*, JJ.) KRIPAL SINGH *v.* SANT SINGH.

71 P.R. 1911=30 P.L.R. 1912=13 I.C. 305= 205 P.W.R. 1911.

——*Joint family — Manager—Bond in favour of—Payment to junior members.*

The word "promise" in S. 2 of the Contract Act means, in reference to bonds, a person in whose favour the document has been executed. Where money has been advanced by the manager of a joint family and a bond taken in his name the other members do not become co-promisees with him. (*Seshagiri Aiyar and Napier*, JJ.) ANNALAMMA *v.* BELLAM CHENCHAYYA. **41 Mad 637=7 L.W. 221= 34 M.L.J. 315=45 I.C. 419=23 M.L.T. 215.**

Joint family—Manager—Breach of contract.

——*Joint family—Manager — Breach of contract—Suit for damages.*

A manager of a joint Hindu family who contracts to sell property is personally liable for damages for failure to do so if the contract is found to be not binding on the minors. Relief of the contracting parties is immaterial. (*Abdul Rahim, Napier and Seshagiri Aiyar*, JJ.) ADIKESWAN NAIDU *v.* GURNATH CHETTY. **40 Mad. 338=32 M.L.J. 180= (1917) M.W.N. 171=5 L.W. 428= 39 I.C. 358=22 M L.T. 300.**

——*Joint family — Manager—Breach of contract by previous Manager — Contents of plaint.*

In a suit by the present manager for breach of contract by a former manager of a joint Hindu family it must be clear in the plaint that the suit is by that managing member as a manager. It is not sufficient that he should be incidentally on the record as one out of many members of the family of whom some 30 per cent. have been omitted. 33 All. 272, Ref. (*Roe and Jwala Prasad*, JJ.) GIRWAR NARAIN MAHTEN *v.* MT. MAKBUNISSA. **36 I.C. 542=1 P.L.J. 468.**

HINDU LAW — Joint family — Manager— Contract.

Joint family—Manager—Compromise.

——*Joint family—Manager—Compromise —Minor's liability.*

Where A, under a compromise relinquished the family claims under a decree but the then minor son on becoming major was by the decision of the Privy Council remitted to his original rights under the decree and the case was remanded for decision as to share but during the interval two other sons were born to A, *held* in the events that had happened the compromise agreement must be regarded as failing to convey any of the joint estate at all. (*Lord Buckmaster.*) VENKATA ROW *v.* TULJA RAM ROW. **20 A.L.J. 833=26 C.W.N. 646= 30 M.L.T. 272=45 M. 298= 4 U.P.L.R. (P.C.) 33=(1922) M.W.N. 392= 43 M.L.J. 298=24 Bom. L.R. 1191= 36 C.L.J. 319=1922 (P.C.) 69 (P.C.).**

——*Joint family—Manager—Compromise decree—How far binding on sons.*

The compromise is no better than an alienation of joint family property the son's rights in the joint family property cannot be affected by a compromise decree obtained against a Hindu father. (*Dalal*, A. J. C.) RAM DAYAL *v.* NIMAR SINGH. **26 O.C. 365=1924 Oudh 133.**

Joint family—Manager—Contract.

——*Joint family—Manager — Contract—Purchase of immoveable property — Specific performance—Minor defendants—No necessity or benefit—Specific performance refused.*

An agreement for purchase of immoveable property entered into by the manager of a joint Hindu family cannotafter his death be specifically enforced against the surviving co-parceners. (*Phillips*, J.) BAPPU *v.* V. A. ANNAMALAI. **44 M.L.J. 226=17 L.W. 364= (1923) M.W.N. 218=32 M.L.T. 253= 1923 M. 313.**

——*Joint family—Manager—Contract for Sale—Legal necessity.*

A suit on a contract to sell entered into with the managing member of a Hindu family can be enforced against his sons if the contract is binding on them. But if the sale is not for a legal necessity, then the Court is justified in refusing to decree specific performance. (*Sadasiva Aiyar and Napier*, JJ.) SHUNMUGAM CHETTY *v.* SUBBA REDDI. **31 I.C. 1.**

——*Joint family—Manager — Contract—Sale of land—Existence of minor members—Specific performance.*

The relation of the manager of a joint Hindu family to a minor member of the family is not the same as that of a guardian to his ward. 12 N.L.R. 12, foll. Where a contract is made by the manager of a joint Hindu family acting on behalf of the family including its minor members to sell immoveable property, it is open to the purchaser to claim specific performance of the contract against the whole family including

HINDU LAW — Joint family — Manager— Contract.

the minors. 39 Cal. 232; 35 All. 499; 30 Cal. 539, Dist.; 2 P.L.J. 513, Foll. (*Hallifax*, A.J.Cs.) THAKUR HARGOVIND *v.* MEHTAB SINGH. **18 N L R. 67 = 1922 Nag. 193.**

———*Joint family — Manager—Contract— Power to agree to pay barred debt.*

The manager of a joint Hindu family has no power to enter into any agreement to pay off a time-barred debt. (*Das and Ross*, JJ.) SADHU SARAM PRASAD SINGH *v.* BRAHMDEO PRASAD SINGH. **2 P L.T. 318 = 61 I.C. 20 = 6 P.L.J. 256.**

Joint family—Manager—Decree against.

———*Joint family — Manager — Decree against—Decree if binding on minor members.*

Where a suit is brought against the managing member of a joint Hindu family and the other adult members, the decree obtained in the suit is binding on the minor members also though they were not parties to the suit. (*Mears*, C.J. *and Bannerji*, J.) TULSHI *v.* BISHNATH RAI. **21 A.L.J. 175 = L.R. 4. A. 134 = 1923 A. 284.**

———*Joint family — Manager — Decree against.*

Where a decree had been obtained against the manager alone the question of the liability of the shares of the other co-parceners who were not parties to the suit nor legal representatives would arise only at the stage of sale. 14 Bom. 597 and 23 Bom. 872, Doubted. (*Scott*, C.J. *and Shah*, J.) LAKSHMAN NILKHANT *v.* VINAYAK KESHAV. **40 Bom. 329 = 38 I.C. 956 = 18 Bom. L.R. 52.**

———*Joint family — Manager — Decree against sale—Effect of.*

Where joint family property is sold in execution of a money decree against the manager as manager of the family which character was not denied by the other members of the family and the decree was acquiesced in by them; *held*, that their interest also was conveyed by the sale in execution. (*Scott*, C.J. *and Chandavarkar*, J.) MADHUSUDAN SHIVRAM *v.* BHAU ATMARAM LAD. **18 I.C 385 = 15 Bom. L.R. 36.**

———*Joint family — Manager — Decree against—How far binding on the other members.*

A decree obtained against the head of a family to which the other members are not parties may be operative against the latter under certain circumstances but the principle clearly does not apply unless it is shown that the matter was one in which the member sued was entitled to represent the whole family. (*Mookerjee and Walmsley*, JJ.) AMRITA SUNDARI *v.* SHERAJUDDIN AHAMED. **29 I.C. 156 = 19 C.W.N. 665.**

———*Joint family — Manager — Decree against—Suit for redemption by sons.*

HINDU LAW — Joint family — Manager— Decree against.

Where a foreclosure decree has been obtained against the head of a Mitakshara joint family the son can redeem afterwards only if he shows that the mortgagee had notice of his interest in the property at the time of the foreclosure suit and intentionally omitted to implead him. (*Coxe and Imam*, JJ.) BALKHI MAHAPATRA *v.* BROJO BASHI PANDA. **14 I.C. 333 = 16 C.W.N. 1019.**

———*Joint family — Manager — Decree against—Ex parte decree—Defences open not raised—Decree* res judicata *against junior members.*

An *ex parte* decree passed against manager cannot be impeached by junior members on the ground that the contract forming basis of decree was a wagering one. This plea ought to have been taken by the manager himself. (*Le Rossignol and Harrison*, JJ.) RAM RATAN *v.* THE FIRM OF HURSUKH ROY. **43 P.L.R. 1922.**

———*Joint family — Manager — Decree against—Accounts—Liability of.*

The Manager is not personally liable to pay a co-parcener suing for partition his share of the debts due to the family. So ordinarily no personal decree against the manager should be passed but a Receiver should be appointed. But where the manager is found guilty of fraud and it is likely he would not render and help the Receiver, a personal decree would be justified. (*Sankaran Nair and Oldfield*, JJ.) RAMA AIYER *v.* RAJAGOPAUL AIYER. **14 M.L.T. 510 = 21 I C. 598 = (1913) M.W.N. 982.**

———*Joint family — Manager — Decree against—Effect of, on other members—Binding debts.*

A decree against the managing member of joint family on a debt binding on the family property will bind the other members also if the relief was to be obtained against the managing member not in his individual capacity but as representing the family. Mere omission to describe him as a managing member does not show that he was not sued as such. (*Benson and Abdur Rahim*, JJ.) JIJAMBA BAI SAHIB *v.* SAGNIRAM JATHAI RAO SAHIB. **14 I.C. 374 = 22 M.L J. 45.**

———*Joint family — Manager — Decree against.*

Whether the other members of the joint family are impleaded or not, a decree against the manager binds the other members. (*Hallifax*, A.J.C.) JIRJODHAN *v.* MADAN. **62 I.C. 610 = 4 N L.J. 4.**

———*Joint family — Manager — Decree against — Junior members not impleaded— Rights of—Mortgage suit.*

A son or grandson cannot escape the effect of a foreclosure decree passed against his father on a mortgage executed for purposes binding upon the family estate merely because he was not

HINDU LAW — Joint family—Manager—Decree against.

impleaded by name in the suit. He is represented by his ancestor. If that ancestor has authority to execute the mortgage he equally has authority to represent his son or grandson in the litigation. The ancestor must be presumed to be the head of that branch of the family which includes his own descendants. It is open to a son who is not made a party to the suit to show that the debt in respect of which the mortgage was executed was not really antecedent in the sense accepted by the Privy Council or that if antecedent, it was for a purpose either illegal or immoral, but where the mortgage was within the scope of the father's authority the sons are bound by the decree. 23 O.C. 344 ; 24 O.C. 218 ; 38 A. 383 ; 47 C. 924, referred to. (*Dalal and Daniels*, A.J.Cs.) BHAGIRATHI *v.* PANDIT ONKAR NATH.

10 O.L.J. 185=9 O. & A.L.R. 166=1924 Oudh 17.

———*Joint family — Manager — Decree against.*

A decree against the manager of a joint Hindu family on a family debt binds the coparceners, adults and minors, and the joint family property is liable for the satisfaction thereof. 17 W.R. 113 ; 36 All. 383 (P.C.) ; 34 All. 549 ; 33 All. 272 ; 37 I.C. 833, Rel. on. (*Mullick and Atkinson*, JJ.) MOHAN KRISHNA DAR *v.* HAR PRASAD. **40 I.C. 2.**

———*Joint family — Manager — Decree against—Minor members, if bound.*

A decree passed against a Hindu father as karta of the joint family binds his sons as members of the family. (*Jwala Prasad*, J.) SAKAL SINGH *v.* EHANDERDIP LAL. **49 I.C. 627.**

Joint Family—Manager—De facto.

———*Joint family—Manager*—De facto—*Mortgage of property by one member for satisfaction of family debt.*

Where a joint purchase of property was made in the name of one member and subsequently, a portion of the property was mortgaged by him in satisfaction of a previous joint mortgage debt, the necessary presumption is that the mortgage was executed by the single member in his capacity as the Manager that the other members were bound by the mortgage, and that the property could be sold in execution of a decree obtained on foot of that mortgage though the other members of the joint family were not parties. (*Richards and Tudball*, JJ.) CHANDRA DEO MISSER *v.* HARPA SINGH. **9 I.C. 293.**

———*Joint family—Manager*—De facto—*Suit for recovery of loan.*

A bond in the name of one incumbent o a family the consideration for which was made out of joint family funds, can be sued upon by that member alone without making the other

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members parties to the suit, 20 Bom. 435 ; 127 P.R. 1906, Rel. (*Scott-Smith and Broadway*, JJ.) SHER MUHAMMAD *v.* RAM CHAND. **87 P.R. 1917=170 P.W.R. 1917=42 I.C 377=8 P.L.R. 1918.**

———*Joint family—Manager*—De facto—*Liability of other members.*

Endorsee of a pro-note executed by one member may sue others if the debt was for joint family purposes. (*Ayling and Seshagiri Aiyar*, JJ.) NATARAJA NAICKEN *v.* AYYASAMI PILLAI. **5 L.W. 410=32 M.L.J. 354=(1917) M.W.N. 230=38 I C 339=21 M.L.T. 405.**

Joint family—Manager—Discharge.

See also POWERS.

———*Joint family—Manager—Discharge.*

A manager cannot give a valid discharge for the decree debt due to a joint family without the consent of the other co-parceners, unless it appears, from the face of the decree or other explicit document executed thereafter that the manager was constituted as the agent of all the members of the family to receive payment. (*Oldfied and Sadasiva Iyer*, JJ.) MAHOMED SILAR SAHIB & CO. *v.* NABI KHAN. **(1916) 1 M W.N. 471=3 L W. 579=31 M.L.J. 93=35 I.C. 157=20 M.L.T. 381.**

Joint family—Manager—Liability to account.

———*Joint family—Manager—Liability to account—Extent of.*

The manager of a joint family is liable to account only for what he has actually received and not for what he ought to or might have received. The rules applicable to accounts between trustees and *cestui que trust* in England do not invariably apply in India. (*Sir John Edge.*) ARUMILLI PERRAZU *v.* ARUMILLI SUBBARAYUDU. **44 Mad. 656=19 A.L.J. 621=48 I A. 280=23 Bom. L R. 920=41 M.L J. 33=34 C.L.J. 56=14 L W. 270=(1921) M.W.N. 340=3 U.P.L R. (P.C.) 46=61 I.C. 690=26 C.W.N. 1 (P.C.).**

———*Joint family—Manager—Liability to account.*

A person not manager of the family cannot be asked to account for the management of another. (*Beaman*, J.) HARI DAS LALJI *v.* NAROTAM RAGHAVIJI. **14 I.C. 769=14 Bom. L R. 237.**

———*Joint family—Manager—Liability to account.*

A manager cannot be freed, from the liability of rendering accounts simply because he has said that he possesses no account books and the plaintiff has been unable to prove the existence of such. (*Broadway and Zafar Ali*, JJ.) RAM KISHAN *v.* RANSHAN. **1923 Lah. 551.**

HINDU LAW — Joint family—Manager—Liability to account.

———*Joint family—Manager—Liability to account.*

The manager is not liable to account for his management in the past but must give an account of the assets at the time of partition, and if he fails to do so the Court can order an account to be taken and if he fails to adduce such evidence as he can and ought to adduce a presumption may be drawn against him in respect of joint properties traced in his possession prior to the date of partition. (*Phillips and Krishnan*, JJ.) KODALI KRISHNAYYA *v.* GURAVAYYA. **14 L.W. 668=41 M.L J 503=70 I.C. 146=(1921) M.W.N. 742.**

———*Joint family—Manager—Liability to account—Personal decree against manager.*

A junior member has no right to relief against the manager personally simply on the ground that he could have collected the arrears had he minded to do so unless the failure to make collections is due to the manager's negligence or misconduct and the loss has resulted to the family therefrom. (*Benson and Sundara Aiyar*, JJ.) RAYA *v.* GOPAL MALLAN. **11 I.C. 666.**

———*Joint family—Manager—Liability to account.*

The manager is not bound to account for the family income previous to a separation or suit for partition unless he has been proved to be guilty of fraud, or other improper conduct. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SURAJ NARAIN *v.* IQBAL NARAIN. **48 I.C. 543=5 O.L.J. 676.**

———*Joint family—Manager—Liability to account*—Mitakshara *and* Dayabhaga.

A member of a joint family has a right to ask for a statement of account from the manager. But he is not entitled to sue the manager for any money relief on account of his share. 13 W.R. 75 (F.B.), Ref. On this point there is no difference between the *Mitakshara* and *Dayabhaga* schools of law. (*Stuart*, A.J.C.) SARAT KUMARI DEBI *v.* BHOLA NATH BANERJI. **15 I.C. 616=15 C.C. 244.**

———*Joint family—Manager—Liability to account—Accounts suppressed—Effect—Mitakshara.*

Under Mitakshara, the manager need not account for the profits and rents but he must keep correct accounts and show the savings. He is not a trustee or agent, but as he is bound to disclose the property to the members at the time of partition there is no reason why he should not be treated as such. If he has suppressed accounts so as to render impossible the discovery of the assets, the only way is to see the income and expenses incurred year by year. (*Das and Ross*, JJ.) GOBIND DUBEY *v.* PARMESHWAR DUBEY. **62 I.C. 83=2 P.L.T. 365.**

HINDU LAW — Joint family — Manager—Powers of.

Joint family—Manager—Loan.

———*Joint family—Manager—Loan—Insolvency of manager—Official Assignee.*

On the insolvency of the manager of a joint Hindu family the Official Assignee succeeds to.—(*a*) the undivided interest of the insolvent in the joint property and (*b*) his rights as managing member, so far as they can be exercised for his benefit but he is not entitled to have vested in him the shares of other members. (*Schwabe*, C.J. *and Coutts-Trotter*, J.) THE OFFICIAL ASSIGNEE OF MADRAS *v.* RAMCHANDRA AIYAR. **16 L.W. 559=(1922) M.W.N. 633=43 M.L.J. 369=46 M. 54=1923 Mad. 55.**

Joint family—Manager—Minor.

———*Joint family—Manager—Minor younger brother—Elder brother mortgaging as absolute owner—Effect.*

A mortgage by the elder of two brothers not as representing the younger brother but in his assumed position as absolute owner is void as against the minor younger brother even though the mortgage was for discharging the father's debts. Such mortgage, even though the younger brother was made a party to it, must be regarded as one to which he was not even an assenting party and which therefore does not affect his estate. (*Sir John Edge.*) BALWANT SINGH *v.* REV. ROCKWELL-CLANCY. **34 All. 296=(1912) M.W.N. 462=11 M.L.T. 344=9 A.L.J. 509=15 C.L.J. 475=16 C.W.N. 577=23 M.L.J. 18=14 Bom. L.R. 422=14 I.C. 629=39 I.A. 109 (P.C.).**

[On Appeal from 28 All. 508=1916 A.W.N. 117=3 A.L.J. 274.]

———*Joint family—Manager—Minor.*

Per *Sadasiva Iyer*, J.—A minor cannot be the manager of a Hindu family or guardian of the property or person of his minor wife or child. (*Sadasiva Iyer and Napier*, JJ.) MOHIDEEN IBRAHIM NACHI *v.* MAHOMED IBRAHIM SAHIB. **39 Mad. 608=33 I.C. 894=30 M.L.J. 21.**

Joint family—Manager—Powers of.

See also DISCHARGE.

———*Joint family—Manager—Powers of—Family property under the Court of Wards.*

A manager would be acting within his powers and authority as manager of the family, if in order to save the heavily encumbered joint family estate, he places the same under the charge of the Court of Wards and the Court of Wards can assume management of the whole of the joint family property under S. 6 of the Central Provinces Court of Wards Act (XVII of 1865.) (*Sir John Edge.*) GULAB SINGH *v.* RAJA SETH GOKULDAS. **40 Cal. 784=40 I.A. 117=17 C.L.J. 619=17 C.W.N. 918=15 Bom. L.R. 613=(1913) M.W.N. 542=14 M.L.T. 66=9 N.L.R. 117=19 I.C. 521=26 M.L.J. 173 (P.C.).**

HINDU LAW — Joint family — Manager— Powers of.

——*Joint family—Manager—Powers of—Acts binding on other members.*

The acts of a *kartha* are binding on the other members of the family if they are done for legal necessity and for the benefit of the family. (*Knox and Rafique*, JJ.) PRAGLAL *v.* RAMESWAR. **20 I.C. 921.**

——*Joint family—Manager—Powers of—Discharge.*

A manager can give a valid discharge in satisfaction of a decree passed in favour of the joint family if there are circumstances indicating that he received payment on behalf of the family. (*Griffin and Chamier*, JJ.) SARNAM SINGH *v.* BISRAM SINGH. **18 I.C. 723.**

——*Joint family—Manager— Powers of—Manager appointed as guardian by Court.*

If the *kartha* of a joint Hindu family chooses to apply under the Guardians and Wards Act for being appointed the guardian, he comes under the control of the Court and cannot exercise the power of a karta to mortgage without the previous sanction of the Court. 24 W.R. 46 ; 15 Cal. 627 and 9 C.W.N. 923, Foll ; 7 C. W.N. 681, Dist. The adult male members of a joint Hindu family were entitled to borrow what they considered necessary for joint family expenses provided the minors had been actually benefited by the money borrowed. (*N.R. Chatterjea and Newbould*, JJ.) UPENDRA NATH BISWAS *v.* SHIB KUMARI DEBI.
52 I.C. 616=23 C.W.N. 634.

——*Joint family—Manager — Powers of—Transfer of holding.*

The *kartha* has power to consent to transfer of occupancy any holding of which the family are the landlords and which is not transferable without their consent. (*Richardson and Walmsley*, JJ.) GOLAPDI MEAH *v.* PURNA CHANDRA DUTTA. **41 I.C. 87=21 C.W.N. 774.**

——*Joint family—Manager—Powers of.*

The father as *Karta* is entitled to the management of the whole property including the interests of minor co-parceners. On his death the management passes to the eldest son as *Karta*. Where all the sons are minors the Court can appoint a guardian of the whole property but this appointment lasts only until the eldest attains majority, after which it comes to an end and the Court is bound to hand over the property to him. (*Broadway and Abdul Raoof*, JJ.) GOBIND SAHAI *v.* BALKAUR.
63 I.C. 559.

——*Joint family—Manager—Powers of.*

The manager can represent the co-parcenary in all suits affecting its interests, can make contracts, refer to arbitration and compromise any claim and can do all acts which he thinks necessary or beneficial to the estate. (*Scott-Smith*, J.) MITHAMAL *v.* SHIVRAM.
60 I.C. 484.

HINDU LAW — Joint family — Manager— Powers of.

——*Joint family—Manager —Powers of —Discharge—Other members, when bound.*

Where the managing member of a joint Hindu family is on bad terms with the other members and the debtor's conduct has been dishonest and fraudulent and he is colluding with the manager to defraud the other members of the family, the members are not bound by the acts of the managing member. (*Rattigan*, J.) RAMSINGH *v.* NANUKCHAND.
10 P.W.R. 1915=27 I.C. 603=60 P.L.R. 1915.

——*Joint family—Manager—Powers of—Collection of rent.*

A lessee from a Hindu father is bound to pay rent to the Hindu father and is not concerned with any dispute between the latter and his sons *inter se*. (*Kensington*, J.) NARPAT RAI *v.* NAUSHARIA MAL. **17 P.W.R. 1913=18 I.C. 592=15 P.L.R. 1912 (Supp.)**

——*Joint family— Manager — Powers of —No right to start new business—Liability to interest.*

As between the members of a joint family *inter se*, whatever may be the powers of the manager as regards the minor members of the family, there is no authority for holding that he can start a new venture without the concurrence of the adult co-parceners ; at least there must be evidence of acquiescence. The immunity of a manager to account for past transactions does not entitle him to enter into illegal transactions and use joint family property for the purpose. It will be gross misconduct sufficient to entitle the others to require the manager to suffer the loss personally and to put back any money that he may have taken out of the family for such transactions. When the manager is made to account for moneys expended by him, there is no general rule that he should pay interest on the sum to be made good. (*Spencer and Kumaraswamy Sastry*, JJ.) TADI BULLI TEMIREDDI *v.* GANGIREDDY.
45 Mad. 281=42 M.L.J. 570=30 M.L.T. (H.C.) 323=16 L.W. 55=1922 Mad. 236 (2).

——*Joint family—Manager—Powers of—Mortgage by manager.*

A *de facto* manager can deal with the family property for proper family purposes, and a mortgage by him of such property for such a purpose is binding on the family. (*Abdur Rahim*, O.C.J. *and Odgers*, J.) SADAYAPPA ASARI *v.* RAGHAVA ASARI.
62 I.C. 220=27 M.L.T. 325.

——*Joint family—Manager—Powers of—Leasing land.*

In an undivided Hindu family all the members need not join in granting *Pattas*. The manager of the family can grant *Pattas* and sue for rents on behalf of the family. 15 Mad. 484, Foll. (*Seshagiri Aiyar and Srinivasa Iyengar*, JJ.) PARTHASARATHI AIYANGAR *v.* RANGASWAMI AIYANGAR. **38 I.C. 645=4 L.W. 654.**

HINDU LAW — Joint family—Manager—Powers of.

——— *Joint family—Manager—Powers of—Promissory note executed by managing member—Renewal after executant ceases to be Manager—Whether binds others.*

A promissory-note executed by a managing member of a joint Hindu family on behalf of himself and his brothers cant be renewed by him after he ceases to be the manager of the family and an acknowledgment by him will not bind the other members of the family so as to save limitation against them. 17 Bom. 512, Dis (*Srinivasa Aiyangar*, J.) KOTHANDA RAMA IYER *v.* ARUNACHALLA AIYER.

32 I.C. 997.

———*Joint family—Manager—Powers of—Gift.*

A recital that properties gifted away to a female member by the manager were self-acquisitions may not negative the intention of exercising powers of disposition which the executant may have as manager. 23 M.L.J. 18, Dist.; 42 Cal. 56, Foll. (*Wallis*, C.J. *and Hannay*, J.) SABAPATHY CHETTY *v.* PONNUSWAMY CHETTI. **28 I.C. 363.**

———*Joint family—Manager—Powers of—Execution of decree.*

The managing member of a joint Hindu family has the right to execute a decree in favour of the joint family. Security should be asked from the managing member only when there is collusion between the manager and the judgment-debtor. 21 M.L.J. 1088; 19 M L.J. 4, Ref. Payment to the junior members of the family is not valid but a payment to the managing member is. (*Benson and Sundara Aiyar*, JJ.) KRISHNA HANDE *v.* PADMANABHA HANDE AND SUBBANA HANDE.

25 M.L J. 442 = (1913 M W.N. 802 = 21 I.C. 177 = 14 M L.T. 233.

———*Joint family—Manager—Powers of—Discharge.*

The managing member of a Hindu family can receive moneys of the family from debtors and give a discharge which will bind the whole family. No section in the C.P. Code restricts the manager's power to receive such money. (*Sundara Iyer and Phillips*, JJ.) DURAISAWMY SASTRIAL *v.* VENKATARAMA IYER.

21 M L.J. 1088 = 10 M L.T. 370 = 12 I C. 503 = (1911) 2 M.W.N. 420.

———*Joint family—Manager—Powers of—Endorsing a Hundi payable to the family.*

The manager of a Hindu family has a right in due course of management to endorse a *Hundi* made payable to the family. (*Abdur Rahim and Phillips*, JJ.) NARAYANAN CHETTY *v.* CHIDAMBARAM CHETTY.

12 I.C. 410.

———*Joint family—Manager—Power to give discharge.*

A mortgage executed in favour of the manager and a minor member of the joint family can validly be discharged by the manager alone to the debtor on receiving the mortgage money. (*Kanhaiya Lal*, J.C.) SHEO CHARAN DAS *v.* BRIJ BAHADUR SINGH. **26 O C. 286 = 1924 Oudh 161.**

HINDU LAW — Joint family — Manager—Representation.

———*Joint family—Manager—Powers of—Discharge by payment.*

The manager of a family carrying on business in the interest of the family as a whole can give receipts and compromise or discharge claims ordinarily incidental to the business, and this power can be exercised even after a decree in favour of himself and other members of his family has been passed. 33 All. 272 (P C.), Ref. (*Kanhaiyalal*, A.J.C.) AJUDHIYA PRASAD *v.* YASEIN ALI KHAN. **20 I C 457 = 15 O C. 146.**

Joint family—Manager—Representation.

———*Joint family—Manager—Representation in suits.*

In cases like a foreclosure suit, the Manager of a joint Hindu family so effectively represents the other members that the family as a whole is bound by the result of the litigation. (*Lord Moulton*). SHEO SHANKAR RAM *v* JALDO KUNWAR. **36 All. 383 = 18 C W N 968 = 16 M L T. 175 = (1914) M W.N. 593 = 1 L.W. 615 = 20 C.L J. 282 = 12 A L.J 1173 = 16 Bom. L R 810 = 24 I C. 504 = 41 I A. 216 (P.C.).**

[On Appeal from 33 All. 71 = 7 I.C 902 = 7 A.L J. 945.

———*Joint family — Manager—Representation—Acts of manager when binding on.*

If a Manager acts in his own individual capacity and not *qua* Manager, the minor members are not liable nor is their share of the family property liable. (*Sir John Edge*). BALWANT SINGH *v.* REV. ROCKWELL CLANCY. **34 All 296 = 39 I.A. 109 = (1912) M.W N 462 = 11 M L T. 344 = 9 A L.J. 509 = 15 C.L J. 475 = 16 C W N. 577 = 23 M L J 18 = 14 I C 629 = 14 B m L.R. 422 (P C.).**

[On Appeal from 28 All. 808 = (1906) A.W.N 117 = 3 A.L J. 274.]

———*Joint family—Manager—Representation—Negotiable instrument—Liability of other members of the family.*

The manager of a joint Hindu family is not its agent but represents the family in all dealings with outsiders and on a negotiable instrument drawn by the manager, the other members of the family would be liable even though he did not sign the instrument. 46 C. 663, Dist; 23 M. 597, Foll. (*Piggott and Walsh*, JJ). KRISHNANAND NATH KHARE *v* RAJA RAM. **20 A.L J. 233 = 1922 All. 116.**

———*Joint family—Manager—Representation in suit—Minors when bound.*

A suit was brought against the adult male members of a Hindu joint family on the basis of a mortgage deed executed by them and a

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decree was obtained. The mortgaged property was foreclosed and the decree-holder obtained possession of it. In a suit by a minor member of the family to set aside the decree on the ground that he was not a party to the prior suit. *Held*, that he was fully represented in the former litigation: and that he was not entitled to any relief on the mere ground that he was no party to the former suit unless he proved that the loan was not taken for a family necessity. (*Tudball*, J.) KATWAROO SINGH *v.* DHARAM DEO SINGH. **29 I.C. 926.**

———*—Joint family—Manager—Representation of other members.*

Under ordinary circumstances and in the absence of fraud or collusion, the managing member of a joint Hindu family is entitled to transact the business of the joint family and represent the members of it. (*Richards*, C.J. *and Banerji*, J.) DAYA SHANKAR *v.* HUBLAL. **37 All. 105=27 I.C. 497=13 A.L.J. 21.**

———*—Joint family—Manager—Representation in suit—Minor.*

A decree passed against two Hindu brothers, the elder being the Manager of the family and the other a minor, on a mortgage executed by their father for a just debt is binding on both and the minor brother was properly represented in the suit. (*Banerjee and Rafique*, JJ.) LACHHMI SHANKAR *v.* RAM AGYAN MISSIR. **21 I.C. 192.**

———*—Joint family—Manager—Representation is suit.*

Where the adult members of a joint Hindu family appear as plffs. or defts. the presumption is that they are acting as Managers on behalf of themselves and of the minor members of the family who had not joined in the suit. 34 All. 549; 34 All. 572, Ref. (*Piggott and Rafique*, JJ.) KRISHNA JIVA TEWARI *v.* BISHNATH. **34 All. 615=16 I C. 392=10 A.L.J. 217.**

———*—Joint family—Manager—Representation in suits—Other members if necessary parties.*

The tendency of modern decisions especially those of the Judicial Committee is in favour of recognition of the representative character of the manager of a joint Hindu family governed by the Mitakshara law, though the question must be decided in each individual case or special class of cases, subject to the operation of relevant statutory provisions. (*Mookerjee and Chotzner*, JJ.) KALIPADA DAS *v.* RAJA SATI PRASAD. **36 C.L J. 234=27 C.W.N. 372= 1922 Cal. 468.**

———*Joint Family — Manager—Representation in suit—Liability of co-parcener not impleaded.*

The Manager in a suit against him on a mortgage clearly represents the interests of minor members impleaded in the suit and where the plaintiff creditor is not aware of the existence of any co-parcener interested in the

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equity of redemption the minor co-parceners are bound by the decree passed therein. (*Mookerjee and Beachcroft*, JJ.) RAGHORAM SINGH *v.* RAJANI KANTA BANERJEE. **29 I.C. 752=21 C L.J. 452.**

———*—Joint family—Manager—Representation in suits.*

The Manager can alone sue in respect of a debt due to the family. (*Jenkins*, C.J. *and Mookerjee*, J.) BHOLA ROY *v.* JUNG BAHADUR SINGH. **22 I.C. 798=19 C.L.J. 5.**

———*—Joint family — Manager—Representation in suit—Ex parte decree against son—Subsequent suit by son to set aside decree—Effect—Redemption—Right of.*

Although a Mitakshara son born after the execution of the mortgage of the family property by his father for a legal purpose is bound by the transaction yet the effect of his birth is to vest in him a part of the equity of redemption, and so he too is a necessary party to a suit by the mortgagee. In such a case the father should not be appointed as the guardian *ad litem* of the minor son as there is a conflict of interest between them. A decree got *ex parte* against the minor son who is not properly represented when the suit by the mortgagee can be set aside by him and he is entitled to get a decree for redemption. (*Mookerjee and Carnduff*, JJ.) BALKISHAN LAL *v.* TOPESWAR SINGH. **18 C.L J. 446=14 I C. 848= 17 C W N 219.**

———*—Joint family—Manager—Representation in suits—Suit on mortgage in which he and other members of family interested.*

After the death of a Hindu in whose favour, a mortgage bond was executed one of the heirs, who was the managing member could sue on the bond without joining the other members as plffs. (*Spencer and Phillips*, JJ.) ANNAMALAI PATHAN *v.* VANGAMUDI. **39 I.C. 427= 5 L.W. 120.**

———*—Joint family—Manager—Representation of minor members—Mortgage suit.*

Where a Hindu father executes a mortgage under circumstances that will bind his own share, the creditor is not disentitled from bringing a suit merely by reason of the fact that he purports to execute the document also as guardian for his minor sons. 41 Cal. 727, Dis. (*Sadasiva Aiyar and Napier*, JJ.) SUBRAHMANIA AIYAR *v.* SIVASUBRAHMANIA AIYER. **(1919) M.W.N. 537=52 I C 931= 10 L.W. 180.**

———*—Joint family—Manager—Representation in suits.*

In suits by or against managing members of joint families, it is not necessary to state in distinct terms that he is suing or is being sued as Manager or karta. 34 All. 549, 22 M.L.J. 45, Ref. A managing member of a joint Hindu family can sue and be sued on behalf of the family and can also enter into a compromise in

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the course of the suit relating to a joint family transaction if is in the interest of the family to do so. 36 All. 383; 17 W.R. 104; 33 All. 272, Ref. to. (*Stuart*, J.C. *and Kendall*, A.J.C.) SHEO DULARE MISRA *v.* BRIJ BHUKHEN LAL. **25 I.C. 849=1 O.L.J. 455.**

———*Joint family—Manager—Representation in suit—Family debt—Other members not necessary parties.*

The head of the family is competent to maintain a suit for a debt due by the deft. to the money lending business, belonging to the family, on a pro-note executed by the deft. in favour of the plff.'s uncle, who at the time was the head of the family, and the other members of the family need not be joined as plffs., although the Court had a discretion to add them as defts., to enable it completely and effectively to adjudicate upon all the questions involved in the case. 9 I.C. 739 P.C., Fol. (*Piggott*, A.J.C.) BISHAMBAR NATH *v.* INDAR BASA. **10 I.C. 200=14 O.C. 127.**

———*Joint family—Manager—Representation in suit.*

In a mortgage suit the interests of the members of the family are effectively represented by their joint Managers. (*Coutts and Das*, JJ.) BAIJ NATH GOENKA *v.* DALIP NARAYAN SINGH. **1 P.L.T. 582=58 I.C. 489=1920 Pat. 261.**

———*Joint family—Manager—Representation in suit.*

All members who at the time of suit represent a joint family must be joined as plaintiff in a suit on a debt due to joint family. (*Mullick and Atkinson*, JJ.) ROMESH CHANDRA *v.* BHUYAN BHASKER. **39 I.C. 225=1 P.L.W. 346.**

———*Joint family—Manager—Representation in suits.*

The manager of a joint Hindu family represents the joint family including minor members in suits by the family against a trespasser. But it is doubtful whether he so represents in a suit under Bengal Tenancy Act. (*Sharfuddin and Roe*, JJ.) MUHAMMAD SADIQ *v.* KHEDAN LAL. **1 P.L.J. 154=36 I.C. 197=2 P.L.W. 365.**

Joint family—Manager—Right to exclusive Possession.

———*Joint family—Manager—Right to exclusive possession.*

Where a certain property mortgaged to plff. by the managing member was in his possession, the deft. another member of the family, who had acquiesced in the action of plff. ousted a tenant put in by the plff. and took forcible and exclusive possession of the property. The plff. sued for possession and ejectment. The lower Courts gave a decree for joint possession. *Held*, that plff. could not eject deft. and obtain exclusive possession. (*Batten*, O.J.C.) RAGHOBA *v.* ZIBOO. **11 I.C. 687=7 N.L.R. 82.**

HINDU LAW—Joint family—Partnership.

Joint family—Manager—Right to Sue.

———*Joint family—Manager—Right to sue—Parties—C.P. Code, O. I, r. 1.*

Where the deft. passed a promissory note in favour of plff., who was the eldest member of the joint family for money due to the joint family and the plff. sued as the manager, *held* that as the deft. dealt with the plff. alone though he knew that the loan was from joint family funds the other members of the family will not be necessary parties. 36 All. 383 (P.C.) and 33 All. 272 (P.C.) Expl. (*Fawcett*, J.) RAMNATH *v.* RAMRAO. **64 I.C. 966=23 Bom. L.R. 1135.**

———*Joint family—Manager—Right to sue for a debt due to the family.*

The managing member of a joint Hindu family can maintain a suit for a debt due to the joint family. 35 Mad. 685; 36 All. 383, Rel. on. (*Krishnan*, J.) SUBRAMANIA GURUKKAL *v.* RAMAKRISHNA AIYAR. **15 L.W. 31=1922 Mad. 407 (1).**

———*Joint family—Manager—Right to sue.*

Manager alone can sue for debts due to the family and need not implead other members as parties. (*Benson and Sundara Aiyar*, JJ.) SHEIKH IBRAHIM *v.* RAMA IYER. **35 Mad. 683=21 M.L.J. 608=10 I.C. 874=(1911) 1 M.W.N. 442.**

Joint family—Partnership.

———*Joint family—Partnership—Manager—Family, if liable.*

The members of a joint family and their joint property are not liable on the death of their managing member for the debts incurred by him in a partnership business which he did not enter into, in a representative capacity or show himself to be the head of the joint family. (*Piggott and Ryves*, JJ.) KHARIDAR KAPRA CO., LTD. *v.* DAYA KISHAN. **43 All. 116=58 I.C. 765=18 A.L.J. 937.**

———*Joint family—Partnership—Death of one member—Contract Act, S. 253 (10).*

Joint ownership in a trading business, through the operation of Hindu Law between the members of a joint Hindu family is not exactly the same as an ordinary partnership arising out of contract. The rights and liabilities of co-parceners in a joint Hindu family firm must be determined with reference to the Contract Act, and the general rules of Hindu Law which governs the family and therefore the death of one of the co-parceners does not dissolve a family partnership. 5 Bom. 38; 26 Cal. 349; 27 Bom. 157, Ref. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) RAGHUMALL *v.* LACHMAN DAS. **38 I.C. 278=20 C.W.N. 708.**

———*Joint family—Partnership—Assets.*

Held, that the immoveable property of the joint family had no connection with the

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partnership business carried on by the members and the same was not liable in execution of a decree against the partnership. (*Scott-Smith and Wilberforce*, JJ.) RAJDULARI *v.* PALA MAL. **50 I.C. 132=44 P.W.R. 1919.**

———*Joint family—Partnership—Death of manager of Hindu family—Effect.*

Where a father, as manager of a joint Hindu family is partner in a firm his death will not dissolve the partnership as the family, as a *persona*, continues to be a partner. (*Shadi Lal and Le Rossignol*, JJ.) NARAIN DAS *v.* RALLI BROTHERS. **61 P R 1915= 31 I.C. 45=136 P.W.R. 1915.**

———*Joint family—Partnership—Each can exist independently of the other.*

There may be a family trading partnership independently of a joint family in Hindu Law, and in a suit against the former evidence of the existence of a joint family ought not to be allowed to be given. (*Shah and Beadon*, JJ.) AMAR NATH *v.* GURDAS MAL. **94 P L.R. 1914=22 I.C 716= 63 P.W.R. 1914.**

———*Joint family—Partnership—Death of member.*

A Hindu joint family firm is not exclusively governed by the Contract Act but is subject to the general rules of Hindu Law according to which death of one does not dissolve family partnership. (*Coutts Trotter and Srinivasa Aiyangar*, JJ.) RAMNATHAM CHETTY *v.* YEGAPPA CHETTY. **19 M L T. 66= (1916) M.W.N. 81=32 I.C 427= 30 M.L.J. 241.**

———*Joint family—Partnership—Liability of son on death of partner.*

Where a Hindu son already liable for the father's debts under the Hindu Law succeeds his father as a partner of a firm the presumption is that he makes himself liable for the previous debts of the firm. (*Wallis and Sadasiva Aiyar*, JJ.) SUBRAMANIA CHETTY *v.* SOMASUNDARAM CHETTY. **24 I.C 86.**

Joint family—Presumption.

———*Joint family—Presumption—Entry of widow's name in revenue papers.*

The mere fact that a widow's name was entered in the revenue papers does not necessarily raise the presumption that she is the widow of a separated Hindu. (*Lindsay and Sulaiman*, JJ.) UMAN SHANKER *v.* MT. AISHA KHATUN. **45 A. 729=1923 All. 88.**

———*Joint family—Presumption—Property.*

So long as a family is joint, every portion of the family property is joint family property it is immaterial in whose name, the property stands in Revenue papers. When the brothers are joint, their widows are presumed to be joint. (*Griffin*, J.) SHRI CHAND *v.* SURAJ KUVAR. **9 I.C. 146.**

HINDU LAW—Joint family—Presumption.

———*Joint family—Presumption.*

Where property stands in the name of a female member of a joint Hindu family, there is no presumption that it is joint family property and not her absolute property. Where title deed is in her name, the person who sets up that the apparent is not the real state of things must prove. (*Mookerjee and Chotzner*, JJ.) BHUBANMOHINI DARI *v.* KUMUDBALA DASI. **28 C.W.N. 131=39 C.L.J. 140=1924 Cal. 467.**

———*Joint family—Presumption—Jointness—Property in the name of son-in-law.*

The presumption of jointness of the family property does not stand, if the property stands in the name of a non-co-parcener, such as a son-in-law. (*Mookerjee*, A.C.J. *and Fletcher*, J.) PROTAP CHANDRA *v.* SARAT CHANDRA. **33 C.L.J. 201=62 I.C. 348=25 C.W.N. 644.**

———*Joint family—Presumption—When cannot be relied upon.*

The presumption of jointness of a Hindu family cannot be relied upon where the disputed property was in the possession of the person under whom the defendant claimed and was ostensibly his property at the time of his death. (*Holmwood and Chapman*, JJ.) PROTAB CHANDRA *v.* SARAT KAMINI DEBYA, **24 I C. 90.**

———*Joint family—Presumption—Jointness.*

In cases of joint Mitakshara families there is a presumption of jointess of their property, as well as of the business which they carry on. The onus is on the person setting up a property as his own to prove it. (*Fletcher*, J.) C.E GREY *v.* WALKER GOWARD & CO. **18 I C. 753= 40 Cal. 523.**

———*Joint family—Presumption of jointness.*

The presumption in the case of Hindu families is in favour of jointness. Where a guardian was appointed for three minors who constituted a joint family, and after each one attained majority his share was given to him and during their minority as well as afterwards the accounts of the income were kept separate in the name of each minor and after all the brothers attained majority the income was divided among them and one of them admitted that he had no concern in the property of another brother, *held*, that the presumption of jointness was rebutted. (*Broadway and Abdul Raoof*, JJ.) GOBIND SAHAI *v.* BAL KAUR. **63 I C. 559.**

———*Joint family—Presumption of jointness.*

The presumption is that every Hindu family is joint. Admissions by members as to the succession of widow in the family are inconsistent with the theory of jointness. (*Reid*, C.J. *and Beadon*, J.) MUSAMMAT RUKMAN *v.* MUSSAMMAT KIRPA DEVI. **338 P.L.R. 1913= 22 I.C. 134=209 P.W.R. 1913.**

HINDU LAW—Joint family—Presumption.

———*Joint family—Presumption—Jointness—Onus.*

There is an initial presumption that the property of every Hindu family is joint, and this presumption is not rebutted by showing that the members dealt with certain paternal property as their own and that in a will by the head of the family the members were mentioned as having been divided. (*Robertson*, J.) RAMU LAL *v.* HARCHARAN DAS.
152 P.W.R. 1913 = 20 I.C. 562 = 297 P.L.R. 1913.

———*Joint family—Presumption—Jointness—Separate living and dealing.*

Where two Hindu brothers have long been living separately and dealing with their individual acquisitions separately and without reference to the other, the presumption as to jointness in a Hindu family loses much of its force. (*Dhobley*, A.J.C.) LAXMAN BHAT *v.* BANABAI. **64 I.C. 906.**

———*Joint family—Presumption—Separation—Proof.*

The ordinary presumption of jointness of a Hindu family is displaced by the presumption from the admitted separation of certain members of the family and a person alleging jointness must prove it by other means. Separate messing and living does not necessarily indicate separation in estate especially where the members cultivate jointly and that they divided only so much produce as was necessary for household purposes and kept the rest for purposes of *len den*. (*Kotval*, A.J.C.) SUA *v.* DUKALU. **59 I.C. 499.**

———*Joint family—Presumption—Rebuttal.*

Mere definition of shares in revenue and village records is not sufficient to rebut the presumption of jointness and union in a Hindu family. (*Lord Shah*) NAGESHAR *v.* GANESH.
7 O.L.J. 48 = 42 A. 368 = 38 M.L.J. 521 = 18 A.L.J. 532 = 56 I.C. 306 = 23 O.C. 1 = 22 Bom. L.R. 596 = 28 M.L.J. 5 (P.C.).
[On appeal from 3 O.L.J. 454 = 36 I.C. 780.]

———*Joint family—Presumption—Father—Transfer of property—Minor sons joining in alienation.*

Where a brother and his two minor brothers under the guardianship of their mother execute a transfer of joint family property, it may be presumed that the manager (brother) was not acting as the Kartha or manager of the family. But where a father makes a transfer and his minor sons are nominally joined, the presumption that may be raised is that the transfer has been made by the father in his capacity as manager. (*Dalal*, J.C.) JANG BAHADUR SINGH *v.* RANJIT SINGH. **10 O.L.J. 383 = 1924 Oudh 141.**

———*Joint family—Presumption—None as to existence of property.*

There is a presumption that a Hindu son and his father are joint in estate, but there is no presumption that the joint family which they constitute possessed any property at all. (*Dalal and Simpson*, JJ.) RAM RAJ SINGH *v.* AVADH BEHARI LAL. **10 O.L.J. 285 = 1924 Oudh 28.**

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———*Joint family—Presumption—Minor.*

A very strong presumption arises that possession is taken on behalf of the wards but it is not an irrebuttable presumption. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAB NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O.L.J. 552 = 1923 Oudh 61.**

———*Joint family—Presumption—Father and son.*

There is an initial presumption in favour of jointness in a Hindu family and his presumption is particularly strong in the case of a father and his only son. (*Daniels and Lyle*, A.J.Cs.) MT. PARBATI *v.* SAIYED MAHOMMAD HADI.
9 O.L.J. 304 = 1923 Oudh 31.

———*Joint family—Presumption--Evidence.*

The jointness of estate is the principal thing to be looked into to determine the jointness of the family. (*Lindsay* A.J.C.) BINDA PRASAD *v.* GAYA PRASAD SINGH. **18 I.C. 517.**

———*Joint family—Presumption.*

A Hindu family is presumed to be joint unless the contrary is proved. (*Miller*, C.J. *and Ali Imam*, J.) RAMDAYAL MAHTO *v.* UTTIM MAHTO. **46 I.C. 265 = 5 P.L.W. 122.**

Joint family—Rights of Co-parceners.

———*Joint family—Rights of co-parceners—Mitakshara.*

The interest of a member of an undivided Mitakshara family in the family property is not individual property. (*Sir John Edge*), GULAB SINGH *v.* RAJA SETH GOKULDAS.
40 Cal. 784 = 40 I.A. 117 = 17 C.L.J. 619 = 17 C.W.N. 918 = 15 Bom. L.R. 613 = (1913) M.W.N. 842 = 14 M.L.T. 55 = 9 N.L.R. 117 = 19 I.C. 521 = 25 M.L.J. 179 (P.C.).

———*Joint family—Rights of co-parcener—Ancestral property.*

A son has from his birth an indefeasible right in the joint family property and mere unfriendliness on his part does not put an end to this right. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD, LAHORE. **110 P.W.R. 1914 = 215 P.L.R. 1914 = 25 I.C. 480 = 3 P.R. 1915.**

Joint family—Rights of Members.

———*Joint family—Rights of members—Mortgage suit.*

Where in a suit on a mortgage of joint family property all the members of the family were not made parties *held*, that as no portion of the mortgaged property can be said to belong to any particular member of the family,

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a decree in respect of the interest of the mortgagor who was made a party cannot be given. (*Banerjea and Chamier*, JJ.) SHIAM SUNDAR LAL *v.* BUDDHU LAL.
24 I.C. 252=12 A.L.J. 794.

———*Joint family—Rights of members—Redemption suit by manager in personal capacity.*

No legal proceedings in a mortgage suit not filed by the manager of a joint Hindu family expressly in his capacity as manager, short of actual redemption will deprive his co-parceners of their right to redeem. (*Scott*, C.J. *and Shah*, J.) RAMCHANDRA NARAYAN *v.* SHRIPAT RAO TUKOJI RAO. **40 Bom. 248=33 I.C. 771=18 Bom. L.R. 33.**

———*Joint family—Rights of members.*

A son born in a joint family takes an interest in the family property by reason of his birth, and his claim to interest in that property is based on his own rights as he becomes a co-parcener in that family at his birth. (*Davor and Robertson*, JJ.) AHMEDBHAI HABIBHOY *v.* DINSHAW MANEKJI PATIT.
12 I.C. 818=18 Bom. L.R. 1061.

———*Joint family—Rights of members—Right of one to build.*

Where the portion of the land on which the building by one member was erected was such that neither party could have exclusive use of it without injury to the other, the other members, should have joint use of the building with the deft. though the strict right of the plaintiff would have been to have the building demolished and to have the land restored to its original condition as it was before the deft. put up the building. (*Fletcher and Newbould*, JJ.) ATINDRA MOHAN RAY *v.* RAMESH CHANDRA ROY. **40 I.C. 504.**

———*Joint family—Rights of members—Mortgage by some brothers of whole of family property—Suit on mortgage—Whether share of non-executant affected.*

Where some of the individual Hindu brothers mortgaged the whole property, a decree obtained in a suit on the mortgage and the sale in execution thereof will only pass the interest of the mortgagor brothers and not of those who did not join the mortgage. (*Mookerjee and Roe*, JJ.) GIRIJA KANTA CHAKRABATTY *v.* MOHERIM CHANDRA ACHARJYA. **20 C.W.N. 675=35 I.C. 294=23 C.L.J. 587.**

———*Joint family—Rights of members—Declaration of their title—Decree for possession—Court-fee.*

The plaintiffs governed as they are by Hindu Law are co-parceners and are not competent to sue only for a declaration of their title, but must sue for possession. Nevertheless, although declaratory decrees were asked for, the plaintiffs can be given decrees for possession of the land if they pay the Court-fees required

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for possessory suits. (*Martineau and Harrison*, JJ.) AMIR AND PAULAT *v.* KHAN CHAND.
1923 Lah. 255.

———*Joint family—Rights of members—Decree against family property.*

Where there is a decree against the joint family property, including the separate property of a certain member of the joint family, it follows that when that member quits the family all of his property that remains liable for the satisfaction of the decree is (1) his share in the joint family (2) his separate property such as it was up to the date when he quitted the family. Separate property acquired after he quitted the family is not, and never could have been joint family property. (*Le Rossignol and Campbell*, JJ.) GOKUL CHAND *v.* FIRM OF HUKAM CHAND NATHUMAL.
3 Lah. 14=1922 Lah. 84.

———*Joint family—Rights of members—Injunction to one member against others.*

An injunction cannot be granted to one member of a joint Hindu family in possession of joint family property against others. (*Oldfield and Seshagiri Aiyar*, JJ.) SRINIVASA IYENGAR *v.* NARAYAN AIYANGAR.
11 L.W. 606=56 I.C. 608=(1920) M.W.N. 364.

———*Joint family—Rights of members—Suit between members of the same family—Personal interest of members.*

In suits between members of a family to which no strangers are parties, each member must be considered to be litigating for his own benefit and not for the benefit of the estate. 33 Cal. 556 (P. C.), Foll. (*Sankaran Nair and Spencer*, JJ.) GOTEPATI SUBBAMMA *v.* GOTEPATI NARASAMMA. **26 I.C. 16=27 M.L.J. 486.**

———*Joint family—Rights of members—Pro-note in favour of a person—Survivors can sue—Principle of partnership.*

The survivors in a Hindu family can sue on a promissory note on the death of the member in whose name it was taken. The suit is maintainable not on the principle of a family corporation but of a partnership. (*Sadasiva Aiyar*, J.) GOPALA IYENGAR *v.* VENKATAKRISHNA IYENGAR.
17 I.C. 748=(1912) M.W.N. 1227.

———*Joint family—Rights of members—One member, tenant of holding—Other members if also tenants.*

Where one member of a joint family is tenant of a holding his becoming such tenant does not make all the members of the family his co-tenants. (*Drake-Brockman*, J.C.) JAGANNATH *v.* BEHARI. **59 I.C. 419.**

———*Joint family—Rights of members—Contract by a member of the family—Liability of other members.*

Where a contract is made by a member of a joint Hindu family, unless it is shown

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that that member was the manager of the family or that the contract was entered into in the course of the family business or that the other members derived a benefit from it the other members are not liable on the contract. (*Lyle*, A.J.C.) RAMDHIR SINGH *v.* MATA PRASAD. **69 I.C. 846=8 O.L J. 617.**

———*Joint family—Rights of members—Mortgage for defending criminal case—Validity.*

The rule of Hindu Law which makes the acts of the manager binding on ths family is wide enough to authorise any member of the family to deal with the family property for the purpose of incurring debts for the family necessity. (*Jwala Prasad and Ross*, JJ.) DHANUKDHARI SINGH *v.* RAMBIRCH SINGH.

1 P. 171=1922 P. 553.

Joint family—Self-acquisitions.

———*Joint family—Self-acquisition—Blending of separate property with joint property makes property joint.*

When members of a joint family, who have control over the joint estate, blend that estate with property in which they have separate interest, the whole property becomes joint. Whether separate estate is brought into a joint family account or the joint family property is brought into the separate accounts, the result is the same. The real question for determination is what is the conclusion to be drawn when people united, by bonds of close relationship and living as a joint family, draw for the joint family expenses out of a fund enriched by other contributions. If the members of a joint Hindu family confuse the income of their joint properties with their separate properties, their intention presumably is that the properties acquired with such mixed-up funds are for the joint family. (*Lord Buckmaster.*) RAJANIKANTA PAL *v.* JAGAMOHAN PAL.

50 Cal. 439=44 M L J. 561=
25 Bom. L.R. 688=37 C.L J. 515=
(1923) M.W.N. 488=27 C.W N 997=
18 L W. 387=9 O. & A.L R. 805=
50 I.A 173=
32 M.L T. 149=
L.R. 4 P.C. 70=1923 P.C. 57 (P.C.).

———*Joint family — Self-acquisition—Burden of proof—Existence of nucleus.*

Where the existence of a nucleus of ancestral property is admitted the onus of proving that any of the family properties is the self-acquisition of a particular member lies on him. (*Mr. Ameer Ali*). RAJANGAM AIYAR *v.* RAJANGAM AIYAR. **31 M L.T. 136 (P.C.)=**
16 L.W. 615=(1922) P.C 266=
4 U.P.L.R. (P.C.) 85=27 C.W.N. 561=
44 M.L.J. 748=37 C L J. 435=21 A L.J. 460.

———*Joint family—Self-acquisition—Earnings of an I.C.S.*

In the present case the earnings of an Indian civil servant were held to be partible property and liable for family debts. Gains of science

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made without any detriment to the father's estate are not partible. Originally, to make such gains partible it was sufficient that the earner was maintained out of the family funds during his education. The rule is now narrowed down to the specialised education only. The partibility of such gains does not depend upon *causa pronima* nor is it negatived by the intervention of the personal elements of the individual co-parcener's character. Once a member is originally found to be equipped for the calling by a special training at the family expense his earnings remain partible throughout his life. He can, however, sever at any time from the family on the footing of bringing his acquisitions into hotchpot without any liability as to future earnings. The burden of proving that the gains are acquired without detriment to the family is on the acquirer. (*Lord Sumner*). AMAR NATH *v* FIRM OF HUKAM CHAND NATHU MAL. **2 Lah 40=**
48 I A. 162=23 Bom. L.R. 671=
19 A.L J. 249=40 M L.J. 327=
2 Pat L T 201=33 C L J 855=
29 M.L T. 258=(1921) M.W N. 175=
25 C.W.N. 534=3 U P.L R. (P.C.) 12=
14 L.W. 435=60 I.C. 379=
42 P.W.R. 1921 (P.C.).

[On Appeal from 70. 71 P R. 1917=
34 I.C 714=2 P.L.T. 208]

———*Joint family—Self-acquisition—Ghatwali tenure—Enfranchisement*

Where lands forming a ghatwali tenure are enfranchised from service and granted to the Ghatwal, the properties so granted are the self-acquisition of the grantee. The other coparceners are not entitled to any interest in it. (*Lord Phillimore.*) DURGA PRASAD SINGH *v.* TREBINI SINGH. **46 Cal. 362=**
45 I.A. 251=21 M.L.T. 407=
28 C.L J. 508=9 L W. 60=
48 I C. 527=21 Bom. L.R 569 (P C).

———*Joint family—Self-acquisition—Gains of learning or science.*

There is no authority in the Mitakshara that the gains made as a pleader's clerk or broker or money-lender personally, and without the aid of the joint funds, by a member of a joint family who received an ordinary education suitable to his position as a member of the family to which he belonged, should in law be regarded as partible, and not as his self acquired property. The expression "gains of science" does not apply to gains which are the result not of the education received at the expense of the joint family but of the peculiar skill, mental abilities and individual effort in applying and improving such education exercised by the person educated at the expense of the family. A mere general education preliminary to the acquisition of a specialised education does not constitute the earnings of joint family property. The question whether a member of a joint Hindu family carried on his business personally for his own benefit

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without detriment to joint funds or for the benefit of the joint family is one of fact to be determined on the evidence. Authorities on the subject reviewed. (*Sir John Edge*) METHE RAM RAM RAKHIOMAL *v.* RAMCHAND RAM RAKHIOMAL. **45 Cal. 666 = 45 I A. 41 = 7 L.W. 361 = 22 C W.N. 377 = 4 P.L.W. 197 = 34 M L.J. 327 = 20 Bom. L R. 566 = 23 M.L T 218 = 16 A L J. 281 = 27 C L J 348 = (1918) M.W N. 537 = 44 I C. 269 = 12 S L.R. 116 (P C.)**

[See the whole question elaborately dealt with in 60 I C. 379 = (1921) M.W.N. 175 (P.C.).]

———*Joint family—Self-acquisition—Government grant.*

The Government in making a grant of an estate can determine the nature of the grant but if there are no specific terms in the grant the surrounding circumstances may be taken into consideration. Where Government after confiscation of joint family property on representation by a member of the family being made makes a grant of the property, without any special conditions in the grant, the property continues to be joint family property in the hands of that person. (*Richards*, C.J. *and Rafique*, J.) BAIJNATH PRASAD SINGH *v.* TEG BALI SINGH. **38 All 590 = 38 I.C. 894 = 14 A.L.J. 913.**

———*Joint family—Self-acquisitions—Gift.*

Property acquired by gift by one member must be presumed to belong exclusively to him even though the expenses of the marriage of that member were met out of the family funds. (*Tudball and Rafique*, JJ.) GHASI RAM *v.* DEBI. **29 I C. 190**

———*Joint family — Self-acquisition — Nucleus — Acquisition by a member — Presumption.*

There is no presumption that a family has any joint property or that property, found in the possession of any one member of a family is joint family property unless it is shown that the family as such possessed at least some property which could serve as a nucleus for the acquisition. (*Karamat Hussain and Chamier*, JJ.) RAM KISHEN DAS *v.* TANDA MAL. **33 All. 677 = 10 I C. 543 = 8 A.L.J. 723.**

———*Joint family—Self-acquisition—Onus of proof.*

Certain members of a joint Hindu family who acquired property while the family was joint sued for a declaration that the property so acquired was their self-acquired property. *Held*, further more it is clear that if there was no presumption, that the property was self-acquired and the plffs. must show that it was their self-acquired property. (*Richards*, J.) SARDHAR SINGH *v.* BHOPAT SINGH. **10 I.C 125.**

———*Joint family—Self-acquisition—Purchase at revenue sale.*

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Purchase of joint family property at a sale by the Revenue authorities for arrears of revenue by a member of the family out of his self-acquired funds is not joint family property but is the self-acquired property of the member. (*Macleod*, C.J. *and Fawcett*, J.) CHOKHU *v.* TATYA. **59 I.C. 569 = 22 Bom. L.R. 1297.**

———*Joint family — Self-acquisition—Nucleus—Onus of proof.*

Onus as to proof that property is self-acquisition may be shifted to person so alleging by existence of nucleus. 33 All. 677, Foll. (*Beaman*, J.) DWARKA PRASAD *v.* JAMNADAS. **9 I.C. 948 = 12 Bom. L.R. 133.**

———*Joint family—Self-acquisition.*

Where the family is joint and there was a nuclues of joint property the burden lies on the person setting up a case of separate estate. (*Mookerjee and Panton*, JJ.) NIBARAN CHANDRA *v.* NIRUPAMA. **34 C L J. 563 = 69 I C. 476 = 26 C.W.N. 570.**

———*Joint family—Self-acquisition—Dayabhaga school.*

Under Dayabhaga, if one member acquires property during his father's life-time, the onus of proving that the property is not his self-acquisition but a joint family property lies on the person asserting it. (*Newbould and Abdul Majid*, JJ.) NIBRAN CHANDRASEN *v.* SASI BHUSAN SEN. **50 I.C. 729.**

———*Joint family — Self-acquisition—Common stock.*

Where two brothers of a *Mitakshara* family coming to Calcutta worked as coolies and out of the earnings purchased a house, no conclusion that the house was acquired out of a joint family fund can be drawn in the absence of any evidence that the money earned was put into a common purse or treated as money belonging to the two brothers as members of a joint Hindu family. (*Fletcher and Teunon*, JJ.) MOTI BOULI *v.* BHAGAWAN MISRI. **35 I C. 655.**

———*Joint family—Self-acquisition—Gains made by a member—Separate amounts.*

When the uncle at the time of his death was a Tahsildar under the Punjab Government, and the plaintiff, was living with his father-in-law in Ludhiana and was carrying on a money lending business there and he and his uncle were therefore living apart, and there was no commensality. *Held*, there would, therefore be no strong presumption that they were joint. The acquisition of distinct property, by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition. Hindu Law texts regarding gains of science establish it as a rule of Hindu Law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance ; but that it is otherwise

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when the science has been imparted at the expense of persons who are not members of the acquirer's family. Acquisition, made as a Government servant, which is kept quite separate from the joint family funds, is impartible and he would deal with it has he chosen. When a person made deposits out of his separate acquisition in the Alliance Bank of Simla in the joint names of himself and of his wife and made them payable to either or to the survivor he intended that there should be a provision for his widow in case he died before her. (*Scott-Smith and Moti Sagar*, JJ.) MT. UTTAM DEVI *v.* DINA NATH. **1923 Lah. 359.**

———*Joint family — Self-acquisition—Bequest.*

In a case of a joint Hindu family formed of father and his only minor son, the initial presumption of the jointness of the property is rebutted by proof of the fact that the father's property is all self acquired. Property devised by will over which the testator had complete powers of disposal is self-acquired property in the hands of the devisee. (*Shadi Lal and Le Rossignol*, JJ.) AMAR NATH *v.* GURAN DITTA MAL. **14 P.R. 1918 = 43 I.C. 117 = 16 P.W.R. 1918.**

———*Joint family—Self-acquisition—Onus—Presumption—Joint family with a nucleus—Acquisition by a member of a family.*

When the parties once formed a joint Hindu family the presumption of law is that the family continued joint unless it is shown to have become divided. Where a family is joint and there is *nucleus* from which property may be acquired, presumption is that property acquired by any member is joint property and the *onus* lies on those who allege that it is self-acquired. The mere fact that any particular acquisition is in the name of one or more of the members does not warrant the assumption that it is the exclusive acquisition of the person or persons named and not of the whole of the joint family (*Scott-Smith and Broadway*, JJ.) NANAK CHAND *v* LACHMAN DAS. **82 P.R. 1917 = 40 I C. 775 = 97 P.W.R. 1917.**

——*Joint family—Self-acquisition—Education.*

Gains of special education obtained at the expense of a joint family are joint family property. Such education must be presumed to have been obtained out of a joint family fund unless shown to be otherwise. (*Rattigan, Shah Din and Le Rossignol*, JJ.) GOKAL CHAND *v.* HUKAM CHAND NATHUMAL. **109 P.W.R. 1916 = 70 and 71 P.R. 1917 = 34 I.C. 714 = 164 P.L R. 1916.**

———*Joint family—Self-acquisition—Grant by Government.*

When a Jagirdar was granted a Rakh and his name was entered in the Revenue Papers as proprietor, the Rakh becomes the self-acquired property and a bequest of it to the wife of the

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Jagirdar could not be questioned by the reversioners. (*Kensington and Rattigan*, JJ.) MAYA DAS *v.* GURDIT SINGH. **146 P.W.R 1912 = 16 I.C. 855 = 167 P.L.R. 1912.**

———*Joint family—Self-acquisition—Ancestral property.*

Acquired property, moveable or immoveable, is ordinarily alienable according to the will and pleasure of the last full owner. Property purchased out of the income of father's estate or with one's own earnings independently of that estate, is not ancestral. (*Kensington and Johnstone*, JJ.) KARM BAKSH *v* CHIRAGH DIN. **66 P.R 1911 = 104 P L R. 1912 = 12 I.C. 862 = 190 P.W.R. 1911.**

———*Joint family — Self-acquisition — Nattukottai Chetty—Money received for giving son in adoption—Enures to family.*

In the absence of a custom, money paid to a Nattukottai Chetty for giving his son in adoption enures to the benefit of the whole family and is not the self-acquired property of the father. (*Ayling and Odgers*, JJ.) RAMASWAMY CHETTY *v.* PALANIAPPA. **18 L.W. 656 = (1923) M W N. 841 = 1924 Mad. 354.**

——*Joint family—Self-acquisition — Repurchase of property which has passed out of the family.*

Where a member of a joint Hindu family purchases with his own funds property which has validly and voluntarily passed out of the family by a conveyance, the property so purchased is the absolute and self-acquired property of the member. 5 M.H.C.R. 156, Ref. (*Schwabe, C.J. and Wallace*, J.) MAGDOON MUHAMMAD MARKAYAR *v.* MARLAYAN BANSILAL. **(1922) M.W.N. 824 = 1923 M. 248.**

———*Joint family — Self-acquisition — Blending of.*

It is open to the owner of an impartible estate, to incorporate his self-acquisitions in the Zemindary. (*Wallis*, C.J. *and Krishnan*, J.) GURUSAMI PANDIYAN *v.* PANDIA CHINNA THAMBIAR. **44 Mad. 1 = 39 M L.J. 529 = (1920) M.W.N. 660 = 61 I C. 242. 28 M.L.T. 365.**

———*Joint family—Self-acquisitions—Inam—Enfranchisement.*

Where lands comprising the Inam held by a member of a Hindu family are enfranchised, from the condition of service, they do not become partible amongst all the persons having hereditary interest in the office through descent from the original grantee, but is partible only among those who belong to the joint family of the holder of the office at the time of enfranchisement. 26 Mad. 399; 42 Cal. 1179, Foll. (*Spencer and Krishnan*, JJ.) PYRAPPA *v.* SYAMA RAO. **25 M L T. 177 = (1918) M.W.N. 849 = 49 I.C. 250 = 8 L.W. 614.**

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———*Joint family — Self-acquisition — Presumption.*

In joint Hindu families the presumption is that certain property in question is not the self-acquired property of a particular member where he had no separate fund and the acquisition was not made with money belonging to himself. 26 M.L.J. 248, Ref. (*Wallis*, C.J. *and Burn*, J.) DHARNU SHETTI *v.* DEJAMMA.
5 L W. 259=38 I.C. 292=(1917) M W.N. 535.

———*Joint family—Self-acquisitions—Conversion of, into family assets—Intention.*

Unless the father is proved deliberately to have intended to give up his full power of ownership over his acquisitions, the property cannot be treated as joint family property. The following facts generally prove the conversion. (*a*) A clear declaration by the father. (*b*) A substantial contribution to the self-acquisitions having been made by the sons. (*c*) Unequivocal conduct on the father's part showing that the son was treated as an equal owner along with him. 14 Bom. L. R 237, Ref. Where a father and son trade together the son does not become partner with his father in the business, but the business becomes joint family property of the father and the son, and even the sons who do not take a prominent part in the transaction are entitled as members of a joint family. (*Sadasiva Iyer and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA.
38 I.C. 244.

———*Joint family—Self-acquisition—Presumption—Separate property—Burden of proof.*

When there is no nucleus of joint property, property acquired by a member of a joint Hindu family is presumed to be his separate property and the plea that he threw it into the common stock must be proved by him who makes it. The mere fact that he lived with his son in the same house and carried on business with him or even raised money for the purposes of the business by mortgaging that very property does not suffice to discharge the onus. (*Wallis*, C.J., *Seshagiri Iyer and Phillips*, JJ.) ETHIRAJULU NAIDU *v.* GOVINDARAJULU NAIDU, **32 I.C. 12.**

———*Joint family— Self-acquisition—Prescription by one member.*

It must not be presumed that one member of a joint undivided family prescribes also for the benefit of the other co-parceners. *Prima facie* he gets an absolute title. 8 Mad. 214; 15 M.L.J. 66; 18 C.W N. 428, Dist. (*Oldfield and Napier*, JJ.) VENKATACHELAPATHI RAO *v.* JAYARAMAYYA. **29 I.C. 456.**

———*Joint family—Self-acquisition — Onus of proof.*

If a co-parcener, asserts that a particular property in his self-acquisition he must affirmatively prove that the property was acquired with the fruits of his own exertions, unaided by family property. (*Ayling and Tyabji*, JJ.) MALAYAPPIER *v.* PICHAI ASARI.
(1915) M.W.N. 208=28 I C. 195=2 L.W. 236.

HINDU LAW—Joint family—Self-acquisitions.

———*Joint family—Self-acquisition — Presumption—Nucleus.*

The acquisition of an individual member of a joint family cannot be considered to be the joint family property unless there has been a nucleus of ancestral property which was utilised for such acquisition or the members have all thrown their joint earnings into the hotchpot with the intention of giving up their individual rights in them. Mere living together of the members of a family will not make the joint owners of properties acquired by each individual member. A Hindu joint family presupposes the possession of common property. 33 All. 677; 6 W.R. (P.C.) 43; 2 Mad. 19, Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) AKKARAJU NARAYANA RAO *v.* AKKARAJU SESHAMMA. **26 I.C. 33=27 M.L.J. 677.**

———*Joint family—Self-acquisition—Proof of—Sale in the name of a member.*

Because title-deeds stand in the plff 's name, the presumption is that they are his own acquisitions unless and until it is rebutted. (*Sankaran Nair and Tyabji*, JJ.) GURUSWAMI IYER *v.* MARI CHETTY. **22 I.C. 852.**

———*Joint family— Self-acquisition—Gift to a member by stranger—Presumption.*

No presumption is legally recognised that a gift by a stranger to one individual member of a joint family is in reality a gift to the family. (*Ismay*, A.J.C.) BATTOOLAL *v.* HIMMAT SINGH. **49 I C. 912.**

———*Joint family — Self-acquisition—Endowments of office—Income—Savings from—Berar Patels and Patwaris Law—Property purchased out of savings of emoluments of Patwari's office under.*

Under the Hindu Law property allotted by the State to a person in consideration of the discharge of particular duties or as payment for an office is *prima facie* impartible, even though the duties of office may become hereditary in a particular family. Property purchased out of the savings of the income of a patwari is *prima facie* self-acquired property, and in the absence of any intention on the part of the acquirer to treat it as joint family property his co-parcener cannot claim a partition of the same. Fields purchased by a Hindu patwari out of the savings of the emoluments of his office under the Berar Patels and Patwaris Law, 1900, are his self-acquired property, and on a partition of the joint family property, in the absence of any indication that he agreed to allow the fields to be treated as joint family property, his son has no right to claim a partition of such fields. (*Mittra*, A J.C.) SHEORAM *v.* SHRIDHAR. **43 I.C. 137=17 N.L.R. 97.**

HINDU LAW—Joint family—Self-acquisitions.

———*—Joint family—Self-acquisition—Gift of—Ancestral property.*

In the absence of any express limitation or condition to the contrary all property obtained by gift or devise bsoomes self-acquired property in the hands of the donee or devisee. Consequently any property obtained by virtue of a gift from the father, grandfather or great-grantfather would be self-acquired property in the hands of the donee if it was not ancestral property in the hands of donor or was acquired by him without any detriment to the joint estate. 26 B. 445 ; 33 A. 665, Rel. (*Kanhaiya Lal*, J.C.) KANHAI LAL *v.* RAM RATAN, **25 O.C. 80=(1922) Oudh 138.**

———*Joint family—Self-acquisition—Grant to manager.*

A grant made to the head of joint family is not necessarily a grant to the family. The onus is on the person alleging to be so. (*Kanhaiya Lal and Daniels*, A.J.Cs.) MAHADEI KUNWAR *v.* BAHU RANI. **60 I.C 180= 6 O.L.J. 53.**

———*—Joint family—Self-acquisitions--Blending with family property—Proceeding against the hypotheca.*

Where the ancestral property of a joint Hindu family and some other property acquired at the expense of the former property are both mortgaged by the manager, the Court in equity may not allow the mortgagee to proceed against the former property so long as the latter is not exhausted if the latter is available and adequate to satisfy the debt. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J.C.) MUNESHWAR BAKSH SINGH *v.* ARJUN SINGH. **3 O L J. 237=34 I.C. 738= 19 O.C. 100.**

———*Joint family—Self-acquisition—Proof of—Nucleus.*

If certain property is to be regarded as joint family property, it must fall under one or other of three classes (1) ancestral property (i.e.). property inherited from a direct male ancestor, (2) property acquired by members of a joint family with the assistance of joint funds or by joint labour and (3) property originally self acquired but afterwards voluntarily thrown by the acquirer into the joint stock with the intention of abandoning all separate claims upon it. Very strong evidence is required to prove that the property falls under class (3) and the mere fact that the acquirer and the other members of the family live together is not sufficient to prove that the acquisition is joint family property. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) NARENDRA BAHADUR *v.* ABDUL HAQ. **30 I.C. 216=2 O.L J. 237.**

———*—Joint family—Self-acquisition — Common stock—Presumption.*

Where the joint family property was very small and the income insufficient and where the members earned their living separately and dealt with each separately there is no question

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of throwing into common stock or of abandoning their separate rights. (*Kanhaiya Lal and Sabonadiere*, JJ.) LACHMI NARAIN *v.* RAM DAYAL. **22 I.C. 887.**

———*—Joint family — Self-acquisition—Bequest by father—Survivorship.*

Where self-acquired property is bequeathed to sons, it should be held by the sons subject to the incident of survivorship, and each son takes an interest which passes to his heirs at his death unless otherwise indicated by the bequest. Because a Hindu family is joint it does not necessarily mean that it is possessed of joint property also. The person who alleges that property is joint must show that there was a nucleus around which the property accumulated. (*Evans*, J.C. *and Lindsay*, A.J.C.) RAMESWAR *v.* RUKMIN. **12 I C. 770= 14 O.C. 244.**

———*—Joint family—Self-acquisition — Presumption.*

Property purchased by a member of a joint family is joint family property, if it was acquired from the common funds of the family of which the purchaser as a member possessed a share. Without such proof of the presumption that the property is joint family property cannot arise. (*Evans*, A.J.C.) GOPAL *v.* BISHUNNATH. **10 I.C. 64.**

———*—Joint family—Self-acquisition—Fees for officiating as priest—Nature of.*

Fees obtained by officiating as priests are the self-acquisitions of the member to whom they are paid. (*Coutts and Ross*, JJ.) TARA PRASAD JHA BALISEY *v* MAYA DEBYA. **(1922) Pat. 91=4 U.P.L.R. (P.) 18= 1922 P. 30.**

———*—Joint family—Self-acquisition—Presumption—Onus.*

Where a member of a joint family was living separate from his family, had a large fortune of his own and had been carrying on a business on his own account for many years although he had originally some ancestral property it is impossible to say that the proceeds of the business presumably belong to the joint family. (*Miller*, C.J. *and Mullick*, J.) ADWAT PRASAD *v.* RADHIKA RAMAN PRASAD SINGH. **48 I C. 694.**

———*Joint family — Self-acquisitions — Father—Sale in execution of mortgage decree —Power of sons to redeem.*

Under the Mitakshara Law sons have no right to redeem the self-acquired property of their father sold in execution of a mortgage decree obtained against him. 20 All. 267, Ref. to. (*Mullick and Kingsford*, JJ.) JAHNAVI PRASAD SINGH *v.* CHARBERAM DUBEY. **35 I.C. 404.**

———*Joint family—Self-acquisition—Grant to a member.*

An ancient grant made to a member of a joint Hindu family must be taken to be a

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grant to the family and not to the individual. 9 W.R. 558, Ref. (*Roe and Jwala Prasad*, JJ.) DURGA BAI *v.* SOBHA SINGH. **34 I.C. 827.**

———*Joint family—Self-acquisition—Bairagis—Property acquired by—'Gadisar'—Nature of.*

Any property acquired by a *Gadisar* of a '*Bairagi Mandir*' must be regarded as the property of the *Mandir* and not as his private property unless there is evidence that he had any source of wealth apart from the funds of, and contributions to, the *Marhi* which came to him as '*Gadisar*'. (*Fawcett and Raymond*, A.J.Cs.) RAMDA *v.* AJUDHIADASS. **63 I.C. 685=14 S.L.R. 137.**

Joint family—Separate property.

———*Joint family—Separate property.*

The presumption of law is that each member retains for himself whatever he earns and that consequently when it is found that properties have been acquired in the name of an individual member such properties are presumably their separate properties. (*Mookerjee and Carnduff*, JJ.) NARAYAN LAL GUPTA *v.* CHULHAN LAL GUPTA. **14 I C. 677=15 C.L J. 376.**

———*Joint family—Separate property—Inheritance by collateral succession—Nature of.*

If a person claims that he has inherited a certain property by right of collateral succession, then such property does not form joint family property and in respect thereof its manager, as such, can neither sue nor be sued so as to bind the other members of the family. (*Kanhaiya Lal*, J.C.) HAUSLA BAKHSH SINGH *v.* RAJ BAKHSH SINGH AND ANOTHER. **4 U.P.L.R. (O.C.) 47.**

Joint family—Surrender.

———*Joint family—Surrender—Relinquishment by co-parcener—Consideration.*

To validate a relinquishment by a co-parcener of his interest in the joint family property it is not necessary that it should be supported by consideration however trifling it may be. Nor is it necessary that the relinquishing co-parcener should be able to support himself otherwise by his own exertions. (*Sadasiva Iyer and Napier*, JJ.) VEERAMAL *v.* KAMU AMMAL. **30 I C. 815=2 L W. 850.**

[Also 26 I.C. 211=27 M.L.J. 262.]

———*Joint family—Surrender—Gift by a father—Consideration.*

A gift by a father of all his interest in the family property in favour of his only son being a relinquishment is valid and binding as it is supported by the consideration of natural love and affection. (*Sadasiva Iyer and Napier*, JJ.) THANGAVELU PILLAI *v.* DORAISWAMY PILLAI. **27 M.L.J. 272=26 I.C. 211=16 M.L.T. 393.**

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———*Joint family—Surrender—Relinquishment—Effect of.*

A relinquishment of his share by a co-parcener in a joint Hindu family in favour of some members of the body does not enure to the benefit of those members only but enures to that of entire co-parcenary body. (*Drake-Brockman*, J.C.) RAO VINAYAK *v.* LAKMAN. **44 I.C. 51=14 N.L.R. 56.**

———*Joint family—Surrender—Gift by one member of his share in favour of another—Effect.*

A deed of gift executed by one of the two members forming a joint Hindu family in favour of the other, in respect of his share of the property or even the whole property only amounts to a surrender by the former of his entire interest in the family property in favour of the latter. 16 All. 369, Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHTAWAR SINGH *v.* RAM SINGH. **36 I C. 44=3 O L J. 289.**

Joint family—Survivorship.

———*Joint family—Survivorship—Death of one member.*

Where one member of a joint Hindu family which has acquired an occupancy tenure dies the tenure devolves on the remaining members and therefore S. 22 of the Agra Tenancy Act does not apply to the case. (*Tudball and Sulaiman*, JJ.) MENDYA *v* JHURYA. **42 All. 668=18 A.L J. 769=37 I C 272=2 U.P.L.R. (A.) 257.**

———*Joint family—Survivorship—Death of one representative.*

If one of the many representatives appointed by a joint Hindu family dies, the surviving representatives continue to represent the family. Where a bond is executed in favour of three members of a joint Hindu family and one of them dies the survivors can sue a bond as they sufficiently represent the family. (*Richards*, C.J. *and Rafique*, J.) RAM KISHORE *v.* PARMESHRI. **33 I.C. 123=14 A L J. 255.**

———*Joint family—Survivorship—Applicability.*

The principle of joint tenancy is unknown to Hindu Law except in the case of co-parcenary between members of a joint family. (*Karamat Hussain and Chamier*, JJ.) KISORI DUHIAN *v.* MUNDRA DUHIAN. **33 All. 665=10 I.C. 563=8 A.L.J. 757.**

———*Joint family—Survivorship—Co-parcener—Attachment of share—Before judgment—Judgment-debtor dying before execution.*

Where a co-parcener's share in joint family property has been attached before judgment and he dies after decree but before the execution-application, the right of survivorship is not defeated. The right will be defeated only by an attachment effected in his lifetime under a decree against him for his separate debt and a sale subsequently held under the attachment.

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though he dies before the execution sale. (*Batchelor and Shah*, JJ.) SUBRAO MANGESH CHANDARVAKAR *v.* MAHADEVI MANJI BHATTA, **38 Bom. 105 = 21 I.C. 330 = 16 Rom. L.R. 848.**

———*Joint family — Survivorship—Death of co-parcener.*

A member of a joint Hindu family, leaves no estate when he dies and the surviving co-parceners do not inherit any estate as his heirs. They become owners in their own right and by the extinction of the interest of the deceased. (*Davar*, J.) JANKIBAI *v.* SHRINIVAS GANESH VALSANKAR. **38 Bom. 120 = 20 I.C. 533 = 15 Bom. L R. 684.**

———*Joint family—Survivorship — Interest at birth and interest acquired by survivorship.*

After the death of the grandfather and the father, there remains no distinction between property vesting by birth and by survivorship so as to necessitate the decree-holder proceeding first against the interest of the grandfather and the father at the time of the death and then against the interest of the grandson. 34 Cal. 735, Dist. (*Cox and Chatterjee*, JJ.) RAMDEO PRASAD *v.* GOPI KOERI.
16 C.W N. 383 = 15 C.L J. 253 = 13 I.C. 349.

———*Joint family—Survivorship—Succession certificate.*

A succession certificate is not necessary to enable survivors to sue for debts due to a deceased member. (*Johnstone*, C.J.) GURDITTA MAL *v.* DHARIMAL. **31 I.C. 904.**

———*Joint family—Survivorship—Attachment before judgment.*

Attachment before judgment followed by decree precludes the accrual of title by survivorship as against the attaching creditor. 17 Mad. 144 ; 4 Mad. 304, Ref. (*Sankaran Nair and Ayling*, JJ.) MUTHUSWAMI CHETTI *v* CHUNAMMAL. **24 I.C. 320 = 26 M.L J. 517.**

———*Joint family—Survivorship—Money advanced—Presumption — Succession Certificate Act, S. 4.*

The Succession Certificate Act does not apply to the collection of debts advanced from joint family funds there being in such cases no claim to property by succession but by survivorship. (*Lindsay*, J.C.) SYED MOHAMMAD NADI *v.* MUSAMAT PARBATI. **18 I C. 228.**

Joint family—Trade.

———*Joint family—Trade—Business not of the joint family minor not liable—Others liable if parties to contract.*

If it were the law that some members of a joint family could escape from liability to perform contracts entered into by them on the ground that their contracts were not such as would bind the joint family and that they had no property other than that which was the property of the joint family, it would be necessary

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for every person with whom they sought to make a contract to assure himself that the business to which the proposed contract would relate was business of the joint family, and that no member of the joint family was a minor. Under such circumstances, it would be difficult to carry on business with persons who happened to be members of a joint family of the Province of Madras. But the minor's interest in the joint property of the family will not be affected by any decree against the other members in transactions which are in the course of any family business. (*Sir John Edge.*) SADASIVA MUDALIAR *v.* HAJEE FAKER MAHOMED SAIT. **44 M L J. 396 = 17 L W. 288 = 37 C L J 569 = 32 M.L.T. 99 = 27 C W N. 677 = 1922 P C. 397.**

———*Joint family—Trade—Starting of a new trade—Ancestral trade—Liability of minor members.*

The distinction between an ancestral business and one started after the death of the ancestor, as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business with the benefits and obligations. In the other, they rest ultimately on contractual arrangements between the parties. It is not competent to the Karta to impose on a minor co-parcener the risks and liabilities of a new business started by himself : consequently a creditor of the new business cannot make the minor's share of the family properties or in the ancestral business liable for the debts of the new business. (*Sir Lawrence Jenkins.*) SANYASI CHARAN MANDAL *v.* KRISHNADHA BANERJI.
43 M.L J 41 = 20 A L J. 409 = 24 Bom. L R. 700 = 49 Cal 560 = 16 L W 536 = 30 M L.T 228 = (1922 M W N 3[illegible]4 = 26 C.W.N. 364 = 35 C.L J 498 = L R. 3 P.C 133 = 49 I.A 103 = (1922) P.C. 237.

———*Joint family—Trade—Manager—Representation in suits—Other members, if necessary parties—Addition of junior members—Limitation Act, S. 22.*

Members of a joint Hindu family who are the sole managers of the family business are competent to enter into contracts in their own names and sue on the said contracts, and it is not necessary that in those suits they should join the other members of the family as co-plffs. Where in such a suit the other members who were unnecessary parties are added after the period of limitation, the suit is not liable to be dismissed as barred under S. 22 of the Limitation Act, 6 Mad. 27 ; Appr ; 6 Cal. 815 ; 3 Mad. 234 ; 14 All. 524 and 18 Mad. 33, Dist. (*Lord Robson.*) KISHEN PRASHAD *v.* HAR NARAIN SINGH. **33 All 272 = 38 I.A. 48 = 15 C W N 321 = 8 A.L J 256 = 9 M L.T 343 = 13 C.L J. 345 = 21 M.L J. 378 = 13 Bom L R. 359 = 9 I.C. 739 = (1911) 2 M.W.N. 395 (P.C.).**

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———*Joint family—Trade—New business by manager—Liability of minor members.*

If the manager of a joint Hindu family opens a new business at the cost of family property, a minor member is not liable in respect of his share for debts incurred in the business. (*Richards*, C. J. *and Rafique*, J.) HAR BILAS *v.* SHANKER LAL. **36 I.C. 402 = 14 A.L.J. 821.**

———*Joint family — Trade — Manager — Contracts—Liability of others—Starting of new business—Profits—Self-acquisition— Rights of others.*

A joint family firm must be regarded like any other joint family asset. If a business is carried on by any one or more members of a joint Hindu family for the benefit of the entire family, and there are other members who do not actively participate in the conduct of the business or are minors and such business had been originally established to the detriment of the family property and handed down hereditarily then the resultant liability of all the members of the family would be referable to the notion of managership by one or more members for the benefit of the rest in the usual sense in which the relation of the manager and other members of the family have often been accepted and defined in the Courts; the liability of the members not actively concerned in the conduct of the business would be restricted to the share of each such member in the joint family property. It might be doubted whether any personal liability beyond that, can attach to members of the family not actively carrying on the business, not in the commercial sense of partners, and, therefore, not parties to any contracts made with the firm as a firm. If one or more members of a joint Hindu family start a business of their own not at the expense of the Hindu family nor with the intention of sharing its profits and losses with the other members, the position of the members so carrying on joint family business and their liabilities to the other members have to be regulated with reference to the extent to which the conduct of such a firm and the resulting profits fall within the legal notion of self-acquisition. (*Beaman*, J.) JOHARMAL LADHOORAM *v.* CHETRAM HARI SINGH. **39 Bom. 716 = 28 I.C 838 = 17 Bom. L.R. 293.**

———*Joint family — Trade — Contract — Necessary parties.*

The only necessary parties to a suit on a joint family business contract are the actual contracting members. Minor members who take no share in the business are not necessary parties. (*Scott*, C.J. *and Russell*, J.) LALJI NENSEY *v.* KESHOWJI. **37 Bom. 340 = 17 I.C. 193 = 14 Bom. L.R 840**

———*Joint family — Trade—Guardian — Powers of guardian—Trading family.*

A guardian cannot embark on a new trade at any rate without the sanction of the Court, so as to make the minor liable for debts. A karta of a joint Hindu family has power to manage a

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trade started by his ancestor, like any other family property which has descended from the ancestor. The powers of a guardian are more limited than those of a karta of a joint Hindu family. If the karta of a joint Hindu family chooses to apply under the Guardians and Wards Act, for being appointed a guardian of the minor and has been appointed as such guardian he comes under the control of the Court and can no longer exercise the power of a karta. A distinction is to be drawn between an ancestral trade and a new trade started after the death of the ancestor by the Manager of the family, and not one between the same line of business and a new line of business. (*N. R. Chatterjee and Newbould*, JJ.). KRISHNADHAN BANERJI *v.* SANYASI CHARAN MANDAL. **23 C.W.N. 500 = 51 I.C. 597 = 29 C L.J. 280.**

———*Joint family—Trade—Minor members—Liability.*

A minor member of a joint Hindu family carrying on an ancestral trade is not personally liable for partnership debts. His liability is limited to his share in the trade assets. (*Chatterjee and Smither*, JJ.) KHETRA MOHANPODDAR *v.* ASWANI KUMAR SHAH. **45 I.C. 667 = 22 C.W.N 488.**

———*Joint family—Trade—Minor members—Position of.*

A Hindu infant who on the death of his father became entitled to an interest in joint family business does not necessarily become a partner on the business. His liability should be limited to his share in the assets of the business. 26 Cal. 349, Foll. (*Holmwood and Chapman*, JJ.) ANATH BANDHU *v.* BIPIN BEHARI. **19 I.C 6.**

———*Joint family — Trade—Manager—Powers of.*

A person carrying on a family banking business as Manager can not only enter into contracts and give discharge so as to bind his co-parceners but may also sue and be sued in his own name without the others being made parties to the suit. (*Carnduff*, J.) GANPAT *v.* BALAMUKUND. **13 I.C. 206.**

———*Joint family—Trade—New business started by Karta—Right of Karta to raise money on joint property.*

Where a new business is started by the Karta of a family and it is for the benefit of the members of the family the joint property is liable for the payment of any money that has been borrowed by the Karta for such business. (*Broadway and Zafar Ali*, JJ.) CHALA RAM *v.* KISHEN CHAND. **1923 Lah. 462 (2).**

———*Joint family—Trade—Presumption—Business of a member.*

There is no presumption that a business carried on by a member of the joint Hindu family is a joint family business. The onus is upon the plff. to prove that the Manager of is joint Hindu family was a partner not in his

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individual capacity, but as a representative of the whole joint Hindu family. (*Scott-Smith and Abdul Raoof, JJ.*) SANT RAM *v.* KEDAR NATH. **56 I.C. 469=2 Lah L.J. 747.**

———*Joint family—Trade—Minor members—Liability.*

Debt contracted by adult members of a joint Hindu family which carried on a trade does not bind the minor members unless it is shown to be for the benefit. (*Rattigan, C.J.*) RAM DHAN DAS *v.* RAMJI DAS. **50 I.C. 215.**

———*Joint family—Trade—Minors—Liability of—Assets of business.*

The presumption was that the two brothers were both partners in the firm which was carried on by the adult brother and in such cases the presumption is that they are members of a joint Hindu family. There was nothing in the circumstances of the case to draw a distinction between the assets of the firm and the other property of the family so far as the liability of the minor deft. was concerned. (*Rattigan and Chevis, JJ.*) WADHAWA SHAH *v.* RATTAN CHAND **189 P L R 1915=30 I.C. 813=126 P.W.R. 1915.**

———*Joint family—Trade—Shop in name of two brothers.*

It does not follow from the presumption of jointness in Hindu families that all the properties owned or shops started by individual members of the family belong to the whole family jointly. (*Scott-Smith, J.*) HARISHANKER *v.* BABU RAM. **241 P.W.R. 1912=18 I.C. 746=73 P.L.R. 1913.**

———*Joint family—Trade—Shop in name of individual member—Liability of others.*

Where two out of five members of a joint Hindu family exclusively started a shop in their individual names in a village other than the ancestral one. *Held*, that the other members are not liable to pay the price of goods supplied to that shop. (*Robertson and Beadon, JJ.*) SURAJ KUMAR *v.* BALDEO DAS. **48 P.R. 1913=23 P.W.R. 1913=18 I.C. 701=60 P.L.R. 1913.**

———*Joint family—Trade—Contract with managing members — Suit by whom to be brought—Parties, other members if necessary.*

The managing members of a trading firm with whom the contract is made are entitled to sue for compensation for breach of contract without joining other members in the suit. (*Rattigan and Chevis, JJ.*) BADRIDAS *v.* SANTA SINGH. **8 P.R. 1912=44 P.W.R. 1912=13 I.C. 873=57 P L R. 1912.**

———*Joint family — Trade — Liability of minors.*

Where monies are borrowed for the purpose of an ancestral business carried on by the members of the joint family, all the members of the family, including minors are liable for the repayment of such sums, to the extent of their share in the whole family property as distinguished from their shares in the assets of the business. (*Abdur Rahim, O.C.J. and Odgers, J.*) THAMMANINA CHINA LAKSHMINARASIMHAM *v.* AKARAPU VENKANNA CINNAH. **38 M.L.J. 65=11 L.W. 55=27 M L.T. 83=55 I.C. 64=(1920) M.W.N. 112.**

———*Joint family — Trade — Liability of members.*

Semble.—In a suit by a creditor to recover a debt contracted by the Manager of a joint Hindu family carrying on a trade, the onus is on the member of the family to show the debt is not binding on them. 34 Bom. 72, Ref. (*Wallis, C.J. and Ayling, J.*) GURUSWAMI NADAN *v.* GOPALASWAMI ODYAR. **42 Mad. 629=36 M L.J. 568=9 L.W. 547=50 I.C. 776=(1919) M.W.N. 301.**

———*Joint family—Trade — Liability of minor son for debts contracted during his minority—Contract Act, Ss. 247 and 248.*

Chief Justice and Spencer, J. (*Sadasiva Aiyar, J., dissenting*) :—If in a joint Hindu family having trade for its occupation, the father starts a business and incurs debts for the conduct of such business during his son's minority, the son is not personally liable for such debts though he continued to take an active part in the business after he became a major. The son on attaining majority, cannot be adjudicated an insolvent in respect of such debts. The rights of the minor do not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership and Ss. 247 and 248 of the Contract Act are not applicable. Per *Sadasiva Aiyar, J.* :—Both under the Hindu Law and under S. 248 of the Contract Act, the son on attaining majority became personally liable for the debts in question. (*Wallis, C J., Sadasiva Aiyar and Spencer, JJ.*) THE OFFICIAL ASSIGNEE OF MADRAS *v.* PALANIAPPA CHETTY. **41 Mad. 824=35 M L J. 473=8 L.W. 530=(1918) M.W.N. 721=49 I.C. 220=24 M.L.T. 216.**

[On Appeal from 20 M.L.T. 565=36 I.C. 787=(1917) M.W.N. 150.]

———*Joint family—Trade—Minors - Liability for debts of manager.*

Debts contracted by the Manager of a joint Hindu family for the purpose of a trade carried on by him for the benefit of the family in partnership with a stranger are payable out of a minor's interest in the joint family property. The liability of the minor member is not restricted to his share in the partnership assets under S 247 of the Contract Act but arises under the Hindu Law and the joint family property is liable for the debt. 35 Mad. 692, Dist. (*Seshagiri Aiyar and Napier, JJ.*) DHULIPALLAH KANAKAM *v.* NANDIPALLI VENKATARAJU. **(1918) M W.N. 44=43 I.C. 76=7 L.W. 218**

———*Joint family—Trade—Manager--Power to continue a joint family trade—Trading case*

HINDU LAW—Joint family—Trade.

—Trade debts—Liability of minors—Ancestral family property and trade assets.

The managing member of a joint family whose members belong to a caste whose caste-calling is trade in certain articles is justified in continuing that caste-calling for the benefit of the family. The mother who is also guardian of a minor can continue such joint family business in which the minor was already interested. In the case of a trading caste or family the ordinary presumption is that the entire family credit and all the joint family properties are embarked in the business. 5 L.W. 341, Foll.; 35 Mad. 692, Dist. There is distinction in principle between an ancestral trade carried on by the father and that carried on by the managing member. (*Ayling and Sadasiva Iyer*, JJ.) MALAIPERUMAL CHETTIAR *v.* ARUNACHALA CHETTIAR. **41 I C 224 = 6 L.W. 417.**

———*Joint family—Trade — Liability of minor members.*

If money was borrowed for an ancestral business carried on by the members of a joint family all the members of the family including the minors are liable for such money to the extent of their share in the family property and not to the extent of their share in the assets of the business because the family property is swelled by the profits of the business carried on the credit of the entire property of the family. 35 Mad. 692; 34 Bom. 72, Rel; 22 Mad. 166, Dist. (*Abdur Rahim and Srinivasa Iyengar*, JJ.) MUTHAYA PILLAI *v* TINNEVELLY SOUTH INDIAN BANK. **37 I.C. 230 = 5 L.W. 341.**

———*Joint family—Trade.*

Minor is liable to the extent of his share in the family property. 5 L.W. 341; 37 I.C. 230. Per *Phillips*, J.—The minor is personally liable for the trade debts incurred since he became a partner. (*Abdur Rahim and Phillips*, JJ.) PALANIAPPA CHETTY *v.* OFFICIAL ASSIGNEE OF MADRAS. **20 M.L.T. 565 = 36 I C. 787 = (1917) M.W.N. 150.**

———*Joint family—Trade — Liability of members.*

All the members of a joint Hindu family carrying on a trade in the family name are liable on a promissory note executed by the manager of the business for a debt due by it to the promisee or his assignee. (*Coutts Trotter*, J.) AYYASAWMI PILLAI *v.* GURUSAWMI NAICKEN. **33 I.C. 691 = 3 L W 463.**

[Also 28 I.C 345.]

———*Joint family—Trade—Widow's power to conduct.*

A trade and its goodwill are valuable property and a widow is not bound to wind up a family trade in all cases without regard to circumstances. Debts incurred to carry on the family business are debts of necessity binding a reversioner. (*Sadasiva Aiyar and Napier*, JJ.) THE SOUTH INDIAN EXPORT CO., LTD. *v.* T. SUBBIER. **28 M.L.J. 696 = 29 I C. 957 = (1915) M.W.N. 488.**

HINDU LAW—Joint family—Trade.

———*Joint family—Trade—Presumption—Assets—Nattukottai Chetti.*

The presumption among the Nattukkottai Chettis is that they make no distinction between trade assets and joint family properties. It may, however, be rebutted by showing that proprietary rights of individual members have been kept distinct from the common trade assets. 27 M.L.J. 631; 27 M L.J. 654, Foll. (*Spencer and Seshagiri Iyer*, JJ.) BANK OF BENGAL *v.* RAMANADHAN CHETTY. **28 I C. 260 = (1915) M.W.N. 180.**

———*Joint family—Trade—Minor—Liability of—Assets of the minor.*

Unlike the case of the minor who is a member of the joint family carrying on business, a minor who is the sole proprietor is not bound by the acts of his guardian unless they are done for his benefit, where the business of a minor is carried on by his mother as guardian through an agent. The creditors have no direct recourse against the minor or his estate and can proceed against the assets only in so far as the guardian is entitled to indemnity out of the assets and even here only where the guardian acted properly and not otherwise. The creditor cannot recover if the guardian has given power to an agent to draw bills in favour of this agent and is deceived by the fraud of the agent and has to account to the minor himself. 3 Cal. 738; 5 W. R. 797, Rel. (*Wallis and Munro*, JJ.) SANKA KRISHNA MURTHI *v.* BANK OF BURMAH LTD **35 Mad. 692 = (1911) 1 M W N 385 = 21 M.L.J. 620 = 11 I C. 79 = 11 M.L.T. 56.**

———*Joint family—Trade—Minor—Liability of.*

A minor member of a joint family upon whom an ancestral trade has descended is bound by all acts of the manager of the adult members acting as managers which are necessary to carry on that trade. But where a business is not ancestral a minor member is not necessarily interested in a business carried on by the major members of the joint family of which he is a member. A minor member of a joint family cannot become a partner in an ancestral business unless he takes active steps to be recognised as such after attaining majority. A minor member of a joint family firm can only be liable to the extent of the assets and income of the business. (*Drake-Brockman*, J.C. *and Findlay*, A J.C.) PADAMRAJ *v.* GOPIKISEN. **55 I C. 129.**

———*Joint family—Trade—Presumption.*

There is no presumption that a joint family has capital for money-lending and no presumption that a business carried on by a co-parcener family business. (*Drake-Brockman*, J.C.) VITHAL *v.* SIVA. **15 I.C. 933 = 8 N.L.R. 82.**

HINDU LAW—Joint family—Trade.

———*Joint family — Trade—Debts—Creditor's rights.*

The debt incurred by a manager of the joint family is binding on all the members when it is contracted for carrying on business or trade on which the family exists, as he has got an implied authority and the creditors are not bound to inquire into its necessity. (*Lindsay*, J.C.) GHANSHYAM DAS *v.* HARDEI.
32 I.C. 380=2 O.L.J. 562.

———*Joint family — Trade— Manager—Power to borrow—Necessity.*

Where a joint Hindu family carries on a business or profession and maintains itself by means of it the manager has an implied authority to contract debts for its purposes. The creditor is not bound to inquire into the finances of the business as long as the debts are required for the business. The power to contract debts is incidental to the carrying on of the business from which the family derives its means of subsistence and support and the whole family property will be liable for the debts. (*Kanhaiya Lal*, A.J.C.) BABA DIN *v.* HANSRAJ. 2 O.L.J. 55=27 I.C. 567=18 O.C. 84.

———*Joint family—Trade — Liability of other members.*

The manager of a joint family has an implied authority to do whatever is best for all concerned and the test in each case is to see whether it was a transaction into which a prudent owner would enter in order to benefit the estate. The manager of a joint Hindu family may embark in money lending business in the ordinary course of management and for that purpose sell a property which brings no income to the family. But the shebait of an idol may not do so, for it is not in the ordinary course of management of the debutter property, and must therefore, amount to a breach of trust. 39 All. 437; 40 Mad. 709; 43 Cal. 797, Ref. (*Das and Adami*, JJ.) SHEOTHAL SINGH *v.* ARJUN DAS. 1 P.L.T. 136=56 I.C. 879=1920 Pat. 155.

———*Joint family—Trade—Assets.*

Joint family property is not part of the assets of the joint family firm. 8 L.B.R. 112. (*Ormond*, J.) O. A. M. K. CHETTY FIRM *v.* K. P. CHETTY FIRM. 31 I.C. 271=8 L.B.R. 112.

———*Joint family—Trade — Liability of co-parceners.*

In case of a joint Hindu family firm, rights of co-parceners cannot be dealt with exclusively with reference to the Contract Act. 5 All. 38, Foll. (*Pratt*, J.C. *and Hayward*, A.J.C.) TAPOO MAL *v.* MENGU MAL. 10 I.C. 978=4 S.L.R. 260.

Joint family business.

See CONTRACT ACT, SS. 239—261.

HINDU LAW—Limited owner.

Legal Necessity.

See HINDU LAW.
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

Legitimacy.

See HINDU LAW—SUCCESSION—ILLEGITIMATE SON.

———*Legitimacy—Connection between man and woman, nature of—Burden of proof.*

Where the connection between a man and a woman is permanent, it is presumed to be not adulterous, and the burden of proving that the connection is adulterous and involves criminal offence lies on him who raises the contention. (*Sadasiva Aiyar and Napier*, JJ.) PALANI AMMAL *v.* KUPPUSWAMI GOUNDAN.
62 I.C. 769=13 L.W. 511.

Limited owner.

——*Limited owner—Compromise—Antecedent title, recognition of—Compromise not an alienation.*

A compromise of disputed claim to property arrived at with a limited owner is not an alienation by her. The compromise recognises and gives effect to the antecedent title of the parties and is binding on them. (*Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN.
33 All. 356=38 I.A. 57=15 C.W.N. 545=8 A.L.J. 552=13 C.L.J. 576=13 Bom. L.R. 427=10 M.L.T. 25=(1911) 1 M.W.N 432=10 I.C. 477=21 M.L.J. 645 (P.C.),
(On Appeal from 29 All. 487).

———*Limited owner— Compromise—Effect on reversioner.*

Where a Hindu lady in possession of her father's estate as limited owner compromises a suit instituted by the next reversioner without raising any defence and even before a guardian ad-litem of her minor son was appointed, and as a result of that compromise gives away half of the estate absolutely to the plff., in the suit, the compromise can in no sense be said to be a settlement of a *bona fide* family suit and it is not binding on the ultimate reversioner. (*Ryves and Gokul Prasad*, JJ.) NARAIN SINGH *v.* RAJKUMAR SINGH.
20 A.L.J. 251=44 A. 428=L.R. 3 A. 229=1922 All. 217.

———*Limited owner—Execution of decree—Invalid surrender.*

Where a surrender by a limited owner in favour of the reversioner is found fictitious or ineffectual, her life interest could be sold in execution of a decree against her. (*Gokul Prasad and Stuart*, JJ.) BHUP SINGH *v.* JHAMMAN SINGH. 4 U.P.L.R. (All.) 21=1922 All. 169

———*Limited owner — Woman's estate—Power to bind the estate.*

Where a Hindu widow or other female limited owner borrows money for the purpose

HINDU LAW—Limited owner.

of the estate on a simple bond and subsequently executes a mortgage, giving the security of estate, for the payment of the debt, it is within her power to bind the estate in this way. (*Tudball and Sulaiman*, JJ.) BHUP SINGH *v.* JHAMMAN. **64 I C. 630=19 A.L J. 881.**

———*Limited owner—Powers of—Lease of land.*

A Hindu female limited owner cannot give permission to plant groves on a piece of land without fixing the rent so as to make it binding on the reversioners. (*Raflque*, J.) JUGAL KISHORE *v.* GOMTI KUAR. **25 I.C. 280.**

———*Limited owner—Nature of estate—Daughter dying after decree—Right to execute.*

There is no distinction between a daughter in possession of her father's estate and widow in possession of her husband's estate; where a daughter obtains a decree for possession of her father's estate and dies before execution the next heir of her father can execute it. (*Richards*, C.J. *and Banerji*, J.) MAHADEO SINGH *v.* SHEO KARAN SINGH.
35 All. 481=21 I C. 464=11 A.L J. 796.

———*Limited owner—Decree against.*

Whether a decree againstl imited owner binds the estate or not, depends on the frame of the suit, the judgment and the decree. (*Mookerjee and Newbould*, JJ.) PUNIT NARAYAN SINGH *v.* RAJ KUNARI GODAVARI KOERI. **32 I.C. 580= 22 C.L J. 400.**

———*Limited owner—Compromise—Alienation—Widow—Necessity—Perpetual lease.*

In suits to set aside alienation for want of legal necessity the test is, whether the purpose for which the alienation was made was proper or legitimate. The propriety of the transaction depends on the circumstances of each case and necessity is only one of the tests of propriety. The validity of a lease by way of family settlement is not affected by the circumstances that the grantor of the lease was a limited owner in possession with qualified powers of alienation. (*Jenkins*, C.J., *Mookerji and Holmwood*, JJ.) UPENDRA NATH BOSE *v.* BINDESHRI PRASAD. **20 C.W.N. 210=32 I.C. 468= 22 C.L.J. 452.**

———*Limited owner—Waste—Relinquishment.*

A relinquishment by daughters of their rights of inheritance to their father's estate does not amount to waste of the original estate to justify the Court in considering whether the estate should be taken out of their hands. A Hindu lady has an absolute right to alienate the estate for her life to an outsider. That will not entitle the reversioner to come in and plead waste and insist on the estate being brought into possession by the Court. (*Chitty and Walmsley*, JJ.) SARABJIT PRATAB BAHADUR *v.* BHAGWAT KOERI. **30 I C. 578.**

———*Limited owner—Decree against—Execution against whole estate—Necessity—Proof of.*

HINDU LAW—Limited owner.

In execution of a personal decree against a Hindu woman with a limited interest in the estate obtained upon allegations that the debt was incurred for legal necessities, the decree-holder in order to make the estate liable is entitled to adduce evidence to prove the necessities for which the debt was contracted. (*Sharfuddin and Coxe*, JJ.) GAJADHAR PERSHAD SAHU *v.* BINDU BASHANI PERSHAD. **29 I.C. 181.**

———*Limited owner—Gift—What passes.*

A limited owner such as a widow or daughter cannot by any act of gift confer greater rights than she herself possesses. (*Kensington and Rattigan*, JJ.) KISHUN DEVI *v.* SHIB SARAN. **77 P R. 1914=25 I.C. 697=217 P.L.R. 1915.**

———*Limited owner—Mother inheriting to son—Surrender to her grandsons on latter undertaking to discharge debts—Two distinct partial surrenders—Validity.*

Where a mother inheriting to her son transferred in 1870 a portion of the estate to her two daughters and in 1890 transferred the other portion to her daughter's sons on the latter undertaking to discharge her debts, *held*, that as the mother had parted with the whole of the interest, the surrender, being *bona fide* one and not a devise to partition the estate, is good though it was effected by two distinct acts. *Quœre.*—Whether the alienations made by a widow for purposes not binding on the estate are affected by the surrender. (*Wallis*, C.J. *and Oldfield*, J.) VENKATA RAJAGOPALA SURYA RAO *v.* VENKATA SURYANARAYANA.
14 L.W. 29=41 M.L J. 208=64 I.C. 488= (1921) M.W.N. 431.

———*Limited owner—Partition—Daughters—Rights of survivorship if extinguished.*

Where daughters succeeding to the father's estate, partition the properties among themselves they must be deemed to have given up their right to succeed by survivorship to the estate of the sister who may die subsequently. (*Sadasiva Iyer and Napier*, JJ.) ALAMELU AMMAL *v.* BALU AMMAL. **16 M.L.T. 592= (1915) M.W N. 26=26 I.C. 455=28 M.L.J. 685.**

———*Limited owner—Partition—Effect.*

Partition between limited owners consisting of mutual relinquishment of their respective life interests in portions of the estate is valid to prevent the survivor from claiming the properties relinquished. 23 M.L.J. 355=22 Mad. 522, Fol. Such relinquishment is not bad under S. 5. of the T. P. Act. (*Sadasiva Iyer and Spencer*, JJ.) SUBBAMMAL *v.* KRISHNA IYER. **22 I,C. 399=26 M.L J. 479.**

———*Limited owner—Acquisition—Prescription—Woman's estate.*

When a Hindu woman's possession is adverse, the question of her *animus possidendi* must be either in her own right or as heir to some one else. The latter is the ordinary presumption. The stridhan heirs must specially show that

HINDU LAW—Limited owner.

she acquired the title by prescription and therefore it must descend to them. (*Sundara Iyer*, J.) *In re*, PRATTIPATI SESAYYA. **11 M.L.T. 261 = 15 I.C. 403 = (1912) M.W.N. 515.**

———*Limited owner — Nature of estate—Woman's estate—Creation of, by agreement.*

A woman's estate can be created in favour of a female quite as much by contract of parties or by grant as by inheritance. It is competent in an undivided Hindu family for a co-parcener to grant to a deceased brother's widow the share of her husband which the latter would have obtained on partition. Such an estate would be held as an ordinary widow's estate by the grantee. (*Benson and Sundara Iyer*, JJ.) MEDA VENKAMMA *v.* MITTA CHELAMIAH. **36 Mad. 484 = 12 M.L.T. 293 = 15 I.C. 17 = 23 M.L.J. 168.**

———*Limited owner—Debts — Extent of liability—Decree against—Compromise decree—How far binds the reversioners.*

A limited owner is not entitled to incur debts for an object which may be beneficial but which are in its character risky. She cannot therefore force a transaction on the reversioners at the risk of the estate itself being sold for discharge of the debt. A decree compromised by a limited owner is binding on the reversioners to the same extent to which a contract of compromise by him would be binding on them. (*Benson and Sundara Iyer*, JJ.) BHOARAJA *v.* ADAPALLI SESHAYYA. **35 Mad. 560 = 12 I.C. 123 = 10 M.L.T. 179.**

———*Limited owner—Acquisition — Prescription—Limited right.*

The possession of a female member of a Hindu family not entitled to take possession as heir is not necessarily the possession of a qualified owner but might confer an absolute title. (*Sankaran Nair and Ayling*, JJ.) KUPPUSWAMY *v.* SRINIVASA IYENGAR. **9 M.L.T. 445 = 10 I.C. 63 = (1911) 1 M.W.N. 315.**

———*Limited owner—Acquisition—Female entitled to maintenance only—Possession long—Mutation in her name—Adverse possession—Daughter, right of, to inherit.*

Where a Hindu female though entitled to maintenance only was in possession of a share of property for a long time of forty years, mutation also being in her name and there being nothing to show that she held the property in lieu of maintenance it was held that she acquired title to it by adverse possession and after her, her daughter would inherit it. (*Macnair*, A.J.C.) KASTURI *v.* LOTE MAJOR. **55 I.C. 952 = 16 N.L.R. 221.**

———*Limited owner—Survivorship—Joint limited owner—Alienation—Agreement.*

Joint limited owners may by agreement between themselves alienate the property inherited so as to defeat the right of survivorship. (*Stanyon*, A.J.C.) BALU BAI *v.* TANU BAI. **24 I.C. 808 = 10 N.L.R. 61.**

HINDU LAW—Maintenance.

———*Limited owner—Lease by—Termination of.*

There are more ways than one by which a tenancy may determine. The limited owner has no power to grant a tenancy beyond his own life as against the reversioner and once the reversioner elects to treat the interest granted to the tenant as an interest extending only for the life-time of the grantor, then in such a case it terminates upon the death of the grantor and there is therefore nothing more to be done to terminate the tenancy. The defendant becomes a trespasser if he refuses to turn out and the reversioner is entitled to bring a suit in ejectment without giving any notice whatever. (*Dawson Miller*, C.J. *and Mullick*, J.) RAGHUBIR SINGH *v.* JETHU MAHTON. **2 P. 171 = 1922 Pat. 383 = 4 P.L.T. 396 = 1923 P. 130.**

———*Limited owner—Life-tenant—Alienation by—Mortgage.*

A mortgagee from a life-tenant must prove beyond doubt that there existed necessity for the loan, and that it was of such a nature that unless the mortgage was executed grave injury would have resulted to the property. A mere mention of the existence of necessity is not conclusive. (*Das and Bucknill*, JJ). BRIJKISHORE NARAYAN *v.* HARBANS NARAYAN. **62 I.C. 611 = 2 P.L.T. 728.**

———*Limited owner—Powers of—Conduct of business.*

A limited owner can alienate property for discharging debts incurred for business forming part of the estate inherited by her. (*Sharfuddin and Mullick*, JJ.) JAGARNATH PRASAD *v.* JAIKSHUN PRASAD. **3 P.L.W. 164 = 34 I.C. 378 = 1 P.L.J. 16.**

Mahant.

See HINDU LAW—RELIGIOUS ENDOWMENT.

Mahant.

See HINDU LAW
(1) RELIGIOUS OFFICE.
(2) RELIGIOUS AND CHARITABLE ENDOWMENTS.

Maintenance.

ARREARS.
CHARGE.
CONCUBINE.
CO-PARCENER.
DAUGHTER.
DAUGHTER IN LAW.
DISQUALIFIED HEIR.
ILLEGITIMATE SON.
IMPARTIBLE ESTATE.
MOTHER.
PROVISION FOR.
RATE OF.

HINDU LAW—Maintenance arrears.

RIGHT TO.
SISTER.
SUIT.
WIDOW.
WIFE.

Maintenance—Arrears.

———*Maintenance—Arrears—Discretion—Demand.*

The Courts, in dealing with claims for arrears of maintenance, possess a very large discretion to grant or to withold those arrears with special reference to the urgent need and necessities of the widow. As soon as the widow satisfied the Court that she was in want at the time at which she was entitled to maintenance provided that the time is within the period of limitation, the Court might in any given case award her, arreare to that extent and that would be quite independent of any demand on her part. In other words, while a demand is allowed to be *prima facie* evidence of need on the wldow's part, it is not in a demand that the right to obtain for arrears of maintenance is rooted. Nor indeed is any demand necessary. (*Beaman and Heaton*, JJ.) KARBASAPPA *v.* KALLAVA. **43 Bom. 66=47 I.C. 623=20 Bom. L.R. 823.**

———*Maintenance — Arrears — Claim for amount how determined.*

The right of Hindu widow to maintenance is one accruing from time to time according to her wants and exigencies. A widow's claim for maintenance should be regulated with reference *inter alia* to the amount of Stridhanam property which she has got. In awarding arrears of maintenance the wants and exigencies of the widow in the particular case should be considered in fixing the amount. 15 Bom. 236, Dist.; 3 Bom. 415, Foll. 2 Bom. 573: 29 I.C. 557, Rel. on. (*Scott*, C.J. *and Russel*, J.) RANGU BOI *v.* SINHAJI RAMACHANDRA KULKARNI. **36 Bom. 383=14 I.C. 821=14 Bom. L.R. 267.**

———*Maintenance—Arrears—Right to.*

A Hindu widow in order to establish her right to arreare of maintenance need not prove demand and refusal. (*Beaman and Hayward*, JJ.) PARVATHI BAI BHAGIRATH *v.* CHATRU LIMBAYI. **36 Bom. 131=12 I C. 708=13 Bom. L.R. 1023.**

———*Maintenance — Arrears — Delay in suing—Demand.*

A Hindu widow can claim arrears of maintenance at a reasonable rate, regard being had to the status of her deceased husband and to the value of the property left by him and a demand for such arrears and refusal to pay need not be proved to sustain a suit. (*Rattigan*, C.J. *and Abdul Raoof*, J.) MUSSAMMAT BHOLI BAI *v.* MUSSAMMAT CHIMNI BAI.
147 P.R. 1919=55 I.C. 2=33 P.W.R. 1920.

———*Maintenance — Arrears — Widow's right to.*

HINDU LAW—Maintenance—Charge.

A widow is entitled to claim arrears of maintenance. The maintenance awarded need not be a charge on the whole family property, and a personal decree should not ordinarily be passed against the defendants. (*Sankaran Nair and Spencer*, JJ.) MANIOKA MUDALIAR *v.* SOUBAGIA AMMAL. **25 I.C. 897=27 M.L.J. 291.**

———*Maintenance — Arrears — Right of widow.*

Neither wrongful withholding nor demand is necessary for a widow to claim arrears. Arrears will be refused only where the persons liable had justifiable ground for inferring that the claim had been abandoned and had in consequence not set aside, any portion of the income to meet the claim. 24 Mad. 197, Foll. (*Wallis*, J.) PUSHPAVALI THAYARAMMAL *v.* RAGHAVIAH CHETTY. **23 I.C. 413=16 M.L.T. 95.**

———*Maintenance — Arrears — Waiver of right to arrears of maintenance.*

Waiver of right to arrears of maintenance cannot be inferred from separate residences. There must be justifiable grounds for the deft's belief that the plff. had abandoned her right to have maintenance and the deft, must in consequence have not set aside any portion of the income to meet such claim. Removal of the widow from the husband's home by her relations is not by itself sufficient to establish waiver. (*Benson and Sundara Aiyar*, JJ.) RANGATHAI *v.* NELLI MUNUSWAMI.
(1911) 1 M.W.N. 322=9 M.L.T. 461=10 I.C. 110=21 M.L.J. 705.

———*Maintenance — Arrears — Right to—Demand unnecessary—Waiver of right—Burden of proof.*

To entitle a widow to arrears of maintenance no demand is necessary. Where deft. pleads waiver of a widow's right to arrears of maintenance he must show that the plff. agreed to waive her right or led the debtor to believe as a reasonable man that she would not claim arrears. 24 Mad 147, Ref. (*Benson and Sundara Aiyar*, JJ.) SUBRAMANIA AIYER *v.* MUTHAMMAL. **21 M.L.J. 482=(1911) 1 M.W.N. 200=9 I.C. 614=9 M.L.T. 316.**

Maintenance—Charge.

———*Maintenance—Charge — Co-parceners widows in possession—Suit by surviving member without offer of maintenance—Mesne profits disallowance of—Fixing of maintenance by Court—Charge on properties decreed.*

Under the family custom of the Dharbanga Raj, babuana (maintenance) grants made by the Raja do not descend to female heirs of the descendants of the grantee. Where such a grantee died leaving two sons who divided the properties granted and subsequently one of the sons died leaving his own widow, whereupon the other son claimed the properties of the deceased to the exclusion of the widow. *Held*, that the properties granted vested in the sur-

HINDU LAW—Maintenance—Charge.

viving son, the widow being excluded under the family custom and he was entitled to recover possession. The widow was however entitled to suitable maintenance and the plff. not having made an offer of a substantial maintenance to the widow, was not entitled to the mesne profits for the period she was in possession. The Privy Council fixed the amount of maintenance and charged it on the properties decreed to plaintiff. (*John Edge.*) EKRADESHWAR SINGH *v.* GANESHWARI BAHUASIN. **42 Cal. 582 = 41 I.A. 275 = 18 C.W.N. 1249 = 27 M L J. 373 = 16 M.L.T. 382 = 1 L W. 863 = (1914) M.W N. 807 = 12 A L J. 1217 = 21 C.L.J. 9 = 17 Bom L R 18 = 25 I.C. 417 (P.C.).**

[On Appeal from 3 I.C. 207]

———*Maintenance—Charge—Widow's right—Decree—Arrangement—Liability of heirs.*

A claim for maintenance by a female member of a joint family is a personal claim against members of the family. It can only be made a charge on the family property by an order of the Court or by a properly executed document. A transferee of joint property from the properly authorised member of a joint family takes that property free of any claims to maintenance by family. When a person who is personally bound as heir to maintain a widow is allowed by the Court to recover property from the widow he must in equity secure the widow's right to maintenance. 18 Bom. 452, Rel. (*Macleod*, J.C.) PARVATI DEVANNA *v.* SRINIVAS. **55 I.C. 531 = 22 Bom. L.R. 110.**

———*Maintenance—Charge—Widow—Alienation by husband for his maintenance during illness.*

The right of a Hindu widow to maintenance by her husband in his lifetime or to a charge upon his property depends on his power of alienation for a family necessity. A gift by a deceased Hindu of his property to another who has been maintaining and nursing him, in consideration of past and future services is an alienation for family necessity and his widow cannot claim to charge that property for her maintenance. (*Sanderson*, C.J. *and Newbould*, J.) KANTA MOHINI DASI *v.* NANDCHORA SOBA. **35 I.C. 566.**

———*Maintenance—Charge on husband's estate—Bona fide purchaser for value.*

The right of a Hindu widow to a charge on her husband's estate in respect of her maintenance may be lost by a transfer made for legal necessity or for a purpose binding upon the family. In that case the question of notice to the purchaser is immaterial. Even a transferee who takes with a notice of the claim would hold it free from it. Where the property is limited the transferee is bound to enquire whether there is any claim for maintenance or residence, and his failure to do so would be

HINDU LAW—Maintenance—Charge.

notice of the claim. 2 B. 494, Rel. (*Abdul Rzoof and Martineau*, JJ.) BHAGAT RAM *v.* MT. SAHIB DEVI. **3 Lah. 55 = 21 P.W.R. 1922 = 1922 Lah. 278.**

———*Maintenance—Charge—Widow's right—Bona fide purchaser for value.*

The right of a Hindu widow to maintenance is not a charge upon the estate of her deceased husband unless and until it is fixed and charged upon the estate by a decree or by agreement. If such estate has been alienated and is in the hands of a *bona fide* transferee, the widow cannot follow the property even though the transferee had notice of the widow's claim for maintenance. 4 All. 296 : 22 All. 326 ; 24 All. 160, Foll. (*Scott-Smith*, J.) DAULAT RAM *v.* CHAMPA. **2 U.P L.R. (Lah.) 50 = 55 I.C. 28 = 32 P.W.R. 1920.**

———*Maintenance—Charge—Simple money decree against husband's estate—Priority.*

Generally, in the administration of a Hindu's estate binding debts would take precedence over mere claims for maintenance or residence on the part of the female members of the family, but if by the time a debt is sought to be recovered from a family property a claim for maintenance has by decree of Court been made a charge on that property, the charge will take precedence over the debt. 27 Mad. 45 ; 22 Mad. 305 ; 25 I.C. 759 ; 4 All. 296 and 5 All. 367, Ref. (*Oldfield and Seshagiri Aiyar*, JJ). SOMASUNDARAM CHETTY *v.* UNNAMALAI AMMAL. **43 Mad. 800 = 28 M L T. 317 = 39 M L J. 179 = (1920) M.W N. 458 = 59 I.C 398 = 12 L.W. 163.**

———*Maintenance — Charge — Decree — Charging specified items of family property.*

A widow has no charge on the whole or any specified item of the property till the decree declares it. Where however a decree makes it a charge on the joint family property and confines the charge to certain items of such property she can realise the arrears of maintenance due to her by attachment and the sale of the properties so charged in execution of the decree. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) SOWBAGIA AMMAL *v.* MANIOKA MUDALIAR. **33 M L J. 601 = (1917) M.W.N. 782 = 22 M.L.T 386 = 42 I.C. 975 = 6 L.W. 701.**

———*Maintenance — Charge — Widow — Charge on property.*

A Hindu widow can get her husband's estate charged with her maintenance, but she must make an assertion of her right. This right can be exercised against persons other than the husband or son, if they are possessed of family property in which her husband has a share. 12 W. R. (O.C.) 35 ; 17 W.R. 433, Note ; 1 All. 262 ; 28 All. 655 ; 27 Cal. 194 ; 4 All. 296 ; All. 367 ; 2 Bom. 494 ; 10 Cal. 1035 ; 12 Bom. H.C.R. 69 at 71 ; 2 Agra Rep. 42 ; 4 B H.C.R. (A.C.J.) 73 ; 9 B.H.C.R. 116, Foll. In a suit by a Hindu widow for a declaration that she

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has a charge for maintenance on certain property, the co-widow is not a necessary party. A purchaser joining in the effort of defeating the maintenance right of a widow is, under certain circumstances, himself liable to the charge. 3 Cal 198. (P.C.), Ref. to. (*Tyabji and Spencer*, JJ.) KRISHNA PATTER *v.* SINNAPONNU. **25 I.C. 759=16 M.L.T. 551.**

———*Maintenance — Charge — Decree in terms of award—Award creating charge—Execution personally against judgment-debtor.*

Where a maintenance decree was passed in terms of an award which created a charge upon immoveable property for the payment of maintenance the decree can be executed personally against the judgment-debtors without seeking to bring the property charged to sale. (*Mulick and Thornhill*, JJ.) MAHAMAYYA PRASAD SINHA *v.* SAKHDAI KOER. **46 I.C. 169.**

Maintenance—Concubine.

———*Maintenance — Concubine—Right to avaruda Stree—Continuous keeping.*

A continuously kept concubine of a deceased Hindu is entitled to claim maintenance from his estate, even though she had, prior to her cohabitation with the deceased, been living with another and had several children. 10 B. H.C.R. 381 ; 12 Bom. H.C.R. 229 ; 12 B. 26 ; 26 B. 163 Ref. (*Shah*, A.C.J. *and Crump*, J.) BAI MONGHIBAI *v* BAI NAGUBAI.
47 Bom. 403=24 Bom. L.R. 1009=1923 Bom. 130.

———*Maintenance — Concubine—Brahmin woman marrying sudra.*

A Brahmin woman marrying a *sudra* is not entitled to maintenance as *dasi* or kept mistress of her husband unless her connection with him has been continuous. 1 Bom. 97 ; 26 Bom. 163. Rel. A contract to pay maintence to such wife is unlawful and opposed to public policy and thus cannot be enforced, according to Hindu Law. (*Chandavarkar and Batchelor*, JJ.) BAI CASHI *v.* JAMNADAS MANSUKH.
16 I.C. 133=14 Bom. L.R. 547.

———*Maintenance—Concubine.*

A permanently kept conbubine is entitled to maintenance from the family property of the person keeping her after the death of her paramour. 20 M.L.J. 350 ; 10 B.H.C.R. 381 ; 12 B.H.C.R. 229 ; 12 Bom. 26 ; 26 Bom. 163 ; 23 Mad. 282, Foll. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) PANCHAPAKESA ODAYAN *v.* KANAKA AMMAL. **6 L W. 408=42 I.C. 344=33 M L J. 465.**

———*Maintenance—Concubine of deceased co-parcener.*

The concubine of a deceased co-parcener has no right of residence in the family house though she may have a right to be maintained out of assets of the deceased co-parcener. 26 B. 163 ; 12 B.H.C.R. 229, Ref. (*Batten*, J.C.) LALA BEHARI LAL *v.* MT. ACHRAJ KUNWAR.
68 I.C. 394 (1).

HINDU LAW—Maintenance—Daughter-in-law.

———*Maintenance—Concubine — Rights of —Agreement by widow—Consideration.*

Under the Hindu Law a concubine who had lived up to the time of his death with a Hindu is entitled to maintenance from his estate in the hands of his widow. This right however does not extend to the case of an adulterous connection 10 Bom. H.C.R. 381; 26 Bom. 163, referred. If the widow agrees to maintain a woman whose connection with her husband was being adulterous, it is a promise unsupported by consideration. (*Daniels*, A.J.C.) MUSSAMMAT CHANDRA KUNWAR *v.* MUSSAMMAT RUKMIN. **9 O.L.J. 60=(1922) Oudh 27.**

Maintenance—Co-parcener.

———*Maintenance — Co-parcener — Joint family—Rights of members to—Limit of.*

In a Mitakshara Hindu family junior members down to the third generation from the head of the family have a co-parcenary right by birth in the ancestral property and this co-parcenary right carries with it the inchoate right to raise an action of partition and until partition a right to maintenance. The right to maintenance begins when co-parcenary begins and ends where co-parcenary ceases. (*Lord Dunedn*) GANGADHAR RAM RAO *v.* RAJA OF PITHAPUR. **41 Mad. 778=35 M.L.J. 392=24 M L T. 276=16 A.L.J. 833=28 C L J. 428=5 Pat. L.W. 227=20 Bom. L R. 1056=23 C.W N. 173=(1918) M.W.N. 922=47 I C. 354=45 I.A. 148 (P.C.)=[On Appeal from 39 Mad. 396=28 M.L J. 624=29 I.C. 356=(1915) M W.N. 869.]**

Maintenance—Daughter.

———*Maintenance—Daughter—Charge.*

A married but unprovided—for daughter, succeeding as heir to her father can charge her father's property for her maintenance and she is not bound to hand over the property undivided, after her death. Evidently the rule applies if she has been kept out of possession. 23 Bom. 291, Diss. (*Miller and Sadasiva Iyer*, JJ.) GUDIMITLA VENKATARAZU *v.* BOLLOZU KOTTAYA. **23 M.L.J. 223=12 M L.T. 230=16 I.C. 139=(1912) M.W.N. 861.**

———*Maintenance — Daughter — Granddaughter.*

A daughter's daughter in a Mitakshara family has not any legal claim for maintenance from the estate left by her maternal grandfather. (*Sharfuddin and Roe*, JJ.) NARAIN BATI KUNWARI *v.* RAMDHARI SINGH.
20 C.W.N. 734=1 Pat. L.J. 81=34 I.C. 277=3 Pat. L.W. 377.

Maintenance—Daughter-in-law.

———*Maintenance—Daughter-in-law—Right to get maintenance, from husband's family—extent of.*

A widowed daughter-in-law has no legal right to maintenance as against the self-acquired

HINDU LAW—Maintenance — Daughter-in-law.

property of her father-in-law, if her husband died during the lifetime of her father-in-law. 2 Beng. L. R. (A. C. J.) 15 ; 37 M. 396 Ref. But although the obligation of the father-in-law to maintain his widowed daughter.in-law is only moral and not legal, when he has no ancestral assets in his hands, the position of the heir who takes his estate by inheritance is different. What was a moral obligation in respect of the father ripens into a legal obligation when the estate passes into the hands of his heirs. 11 A. 194 ; 29 C. 557. Ref. The plaintiff is not entitled to evade liability merely because he received the estate of his father not by inheritance but by way of gift during his lifetime. (*Mookerjee and Cholzner*, JJ.) GOPAL CHANDRA PAL *v.* KADAMBINI DASI.
73 I C. 235.

———*Maintenance — Daughter-in-law — Right, if enforceable against devisee.*

Upon the death of a son, the father has no legal obligation to maintain his daughter-in-law except under certain circumstances. His obligation has been held to be a merely moral or an imperfect obligation which, however, ripens into a legal obligation on the part of the heir who gets his estate after his death. The daughter-in-law can legally enforce her right to maintenance as against the heir in possession of the estate of the father-in-law. *Quœre* : Whether such right to maintenance can be enforced as against the devisee in possession of the estate of the father-in-law. 25 Bom. 263 ; 22 Mad. 305, Ref. (*N. R. Chatterjee and Beachcroft*, JJ.) INDUBALA DASI *v.* PANCHU-MANI DASI. **19 C.W.N. 1169=28 I.C. 578= 21 C.L.J. 292.**

———*Maintenance—Daughter-in-law.*

The plff. sued her father-in-law for maintenance for herself and her minor son. Deft. and his deceased son (Plff's. late husband) were co-parceners in the family ; there had been considerable ancestral property in the hands of deft., and the deceased, would have been entitled until partition to live with the deft., and enjoy the family income with him. *Held*, that under these circumstances the plff. was entitled to maintenance. (*Johnstone and Rattigan*, JJ.) BUDHAN *v.* RADHA KISHEN.
108 P.R. 1915=32 I.C. 33=188 P.W.R.1915.

———*Maintenance—Daughter-in-law—Joint family.*

A widowed daughter-in-law is entitled to be maintained by the father-in-law out of the joint property of her husband and the father-in-law. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) THAYLAMBAL *v.* KRISHNA PATTER.
32 I.C. 955.

———*Maintenance—Daughter-in-law.*

A daughter-in-law, though not entitled to claim maintenance out of the self-acquired property of her father-in-law, is entitled to claim it after the property descends to her brother-in-law as ancestral property. (*Sankaran Nair and Spencer*, JJ.) MANIKKA MUDALIAR *v.* SOUBAGIA AMMAL. **25 I.C. 897= 27 M.L.J. 291.**

HINDU LAW — Maintenance—Impartibl Estate.

———*Maintenance—Daughter-in-law.*

A person having no ancestral assets is not legally bound to maintain his widowed daughter-in-law. 22 Mad. 305, Ref. Where maintenance is claimed against a person not on the ground of his having got property burdened with maintenance the Court has to decide according to justice, equity and good conscience. (*Benson and Sundara Iyer*, JJ.) MEENAKSHI AMMAL *v.* P. RAMA IYER. **37 Mad. 896= (1913) M.W.N. 40=18 M.L.T. 97= 18 I.C. 34=24 M.L.J. 105.**

Maintenance—Disqualified heir.

———*Maintenance — Disqualified heir — Rights of issue.*

Disqualified persons (*e.g.*,) the idiot, the blind from birth, the madman, etc., are debarred from rights of co-parcenary but are entitled to maintenance. The disqualification is a personal one preventing enjoyment and does not affect their right by birth. Children of such disqualified persons, being within the allowed degrees and not themselves stigmatised with personal defects, get by their birth the full status of co-parceners. (*Lord Dunedin.*) GANGADHARA RAMRAO *v.* RAJA OF PITTAPUR. **41 Mad. 778=45 I A. 148= 35 M.L.J. 392=24 M.L.T 276= 16 A.L.J. 833=28 C.L.J. 428= 5 Pat. L.W. 267=20 Bom. L R. 1056= 23 C.W.N. 178=(1918) M.W.N. 922= 47 I.C. 354 (P.C.)**

[On Appeal from 39 Mad. 396= 28 M.L.J. 624=29 I C. 386= (1915) M.W.N. 369.]

———*Maintenance — Disqualified heir — Right of patricide—Wife.*

A patricide after serving his term of punishment is entitled to be maintained out of his father's estate and his wife if chaste and his son born after the murder of his father are also entitled to maintenance. (*Imam*, J.) NILAMADHAB MITRA *v.* JOTINDRANATH MITRA.
18 I.C. 764=17 C.W.N. 341.

Maintenance—Illegitimate son.

———*Maintenance—Illegitimate son.*

Maintenance is not a recurring right. Custom to be legally binding must be ancient certain and constant. Illegitimate children of Mahomedan concubine of Hindu father are not entitled to maintenance under Hindu Law. There is no right to maintenance from legitimate sons. (*Chevis and Le Rossignol*, JJ.) CHARANJIT SINGH *v.* AMIR ALI KHAN.
64 I.C. 892=2 Lah. 243.

Maintenance—Impartible Estate.

See HINDU LAW—IMPARTIBLE ESTATE, MAINTENANCE.

HINDU LAW—Maintenance—Mother.

Maintenance—Mother.

———*Maintenance—Mother—Step-mother.*

When there has been partition between the son and the step-son, both under Mitakshara and Dayabaga Laws the step-son is not bound to contribute for the maintenance of the step-mother. *Aliter* if both are joint. (*Ratligan and Beadon, JJ.*) BISHEN DASS *v.* MUNSA DEVI. **60 P.L.R. 1914=23 I C. 536= 47 P.R. 1914.**

———*Maintenance—Mother—Step-sons.*

Under the Mitakshara Law the right to maintenance of a mother is enforceable not against her son alone, but against the estate possessed by her husband and which is the subject of partition amongst his sons and a decree for maintenance passed both against the son and step son is proper. (*Wallis*, C.J. *and Seshagiri Iyer*, J.) BALATRIPURASUNDARAMMA *v.* SURYANARAYANA. **28 I.C. 349= 17 M.L.T. 188.**

———*Maintenance—Mother.*

In making provision for maintenance of Hindu mother at partition maintenance ought to be provided out of the general funds and not out of the share of the sons only. (*Sundara Iyer and Sadasiva Iyer*, JJ.) SRINIVASA AIYENGAR *v.* THIRUVENGADATHAIYENGAR. **38 Mad. 556=(1913) M W N 1034= 18 M.L.T. 307=(1914) M.W N. 283= 23 I.C. 264=26 M L J. 644.**

Maintenance—Provision for.

———*Maintenance—Provision for—Annuity—Grant of.*

A grant of an annuity *Santhathi paramparyamai* does not exclude the right of the grantee's collateral heirs to succeed. It is permissible under the Hindu Law to create a charge on the property for the payment of the annual maintenances. It is called a "Nibandh or Corrody." (*Lord Phillimore*, J.) RAJA RAJESHWAR DORAI *v.* SUNDARA PANDYASAMI THEVAR. **42 Mad. 581=17 A L J. 153=36 M.L J 164= 23 C.W N. 649=29 C.L J 551= 25 M.L T. 409=21 Bom. L R 585= (1919) M.W N. 511=49 I.C 704= 10 L.W 322 (P C.) [On Appeal from 27 I.C. 283=27 M.L.J. 694].**

———*Maintenance—Provision for — Incidents of—Darbhanga Raj.*

Babuana and Sohag grants are grants made by the Raja of Dharbhanga to younger sons and daughters of the Raja. Reverter to the grantor on failure of male issue in the male line of the grantee and exclusion of widows and daughters attach to the grant by family custom. The sons of the grantee are entitled to partition of the properties granted. (*Sir John Edge*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASAIN. **42 Cal. 582=41 I A 275= 18 C.W.N. 1249=27 M L J 373= 16 M.L T 382=1 L W. 863= (1914) M.W.N. 807=12 A.L.J 1217= 21 C.L J. 9=25 I C 417= 17 Bom. L.R. 18 (P.C.) [On Appeal from 3 I.C. 207].**

HINDU LAW—Maintenance—Provision for.

———*Maintenance—Provision for — Partition of joint family properties.*

When joint property is partitioned, provision may be made for the maintenance of such female members of the family as are entitled to maintenance from the estate. (*Mookerjee and Chotzner*, JJ.) GOPAL CHANDRA PAL *v.* KADAMBINI DASI. **73 I.C. 235.**

———*Maintenance—Provision for* — Malikana—*Burden of proof—Assets.*

In a suit for recovery of a sum of money claimed as *Malikana* the burden lies upon the plff. in the first instance to prove the amount of the net assets of the estate, with reference to which *Malikana* is to be calculated. The burden is discharged on the production by the plff. of a judgment in a previous litigation between the parties in which it was determined that the net assets amounted approximately to a certain sum. The onus then shifts to deft., to establish that since the date of the decision in question the condition of the property had deteriorated and that the assets at the present time are smaller than at the time of the previous litigation. (*Mookerjee and Teunon, JJ*). SURENDRA NATH ROY *v.* GIRIJI NATH ROY. **15 I C. 910=15 C.L.J. 658.**

———*Maintenance—Provision for—Grant to two widows jointly*

An *ekrarnamah* of maintenance for two ladies provided a sum for them and after their death, half of it was to go to a son of one of them if any. *Held*, that after the death of one of them the other lady was entitled to the whole amount by survivorship, no succession certificate being needed. Even if the bond was silent on the point of interest the Court allowed it as damages for detention of money. (*Mookerjee and Carnduff*, JJ.) MATHURA PRASAD *v*, RUKMINI KOER. **13 I.C. 148= 17 C.L J. 87.**

———*Maintenance— Provision for — Husband's liability—Future maintenance.*

A provision for the future maintenance of his wife by a husband is not illegal under the Hindu Law (*Schwabe*, C.J., *Coutts-Trotter and Kumaraswami Sastri*, JJ.) MADAM PILLAI *v.* BADRAKALI AMMAL. **43 Mad. 612=42 M.L.J. 410= 15 L W. 461=30 M.L.T. 274= (1922) M.W.N. 343=1922 Mad. 311 (F.B.)**

———*Maintenance — Provision for—Unambiguous language.*

Prima facie, a provision for maintenance by a grant for money allowance is temporary. Grants to be construed as permanent provisions must be supported by unambiguous language or by a course of conduct that is enjoyment by a branch for a very long time (*Sankaran Nair and Oldfield*, JJ.) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. **(1915) M.W.N. 369=28 M.L J. 624= 29 I.C. 356=39 M. 396.**

HINDU LAW—Maintenance—Provision for.

———*Maintenance—Provision for—Absolute grant.*

An absolute alienation of joint family in lieu of maintenance is not illegal. (*Ayling and Tyabji, JJ.*) SUNDARAM AIYAR *v.* SUBBAMMAL. **29 I.C. 23.**

———*Maintenance—Provision for—Grant to widow—Nature of estate.*

Immoveable property given for the maintenance of a widow is *prima facie* resumable on the death of the grantee. (*Spencer and Hannay JJ.*) GOVINDAMMAL *v.* MARIMUTHU PILLAI. **25 I.C. 582=(1914) M.W.N. 782.**

———*Maintenance—Provision for.*

Compromise by a brother with his brother's widow in a suit for maintenance brought by her to the effect that she will give up her claim for maintenance if her husband's relations will give up their rights in certain villages is valid even though the lady was no party thereto. (*Wallis and Sadasiva Aiyar, JJ.*) VENKATAGIRI NAYANI VARU *v.* SUBBARAYALU NAYANI. **24 I.C. 491.**

———*Maintenance—Provision for—Gift of limited estate in lieu.*

Property given to the widow in lieu of maintenance vests in the widow only for her lifetime and after her death devolves on husband's heirs. Property may be given to a Hindu widow as for a widow's estate by grant, or by conduct. (*Benson and Sundara Iyer, JJ.*) MEDA VENGAMMA *v.* MITTA CHELAMIAH. **36 Mad. 484=12 M.L.T. 293=15 I.C. 17=23 M.L.J. 168.**

Maintenance—Rate of.

———*Maintenance—Rate of.*

In fixing the amount of maintenance of a Hindu widow, the circumstances of each case must be considered: such as the value of the estate and its income, the status of the deceased husband and his widow, the expenses involved by the duties which she has to discharge and the value of any separate property given to her. (*Woodroffe and Walmsley, JJ.*) KRISHNA BHAMINI *v.* BROJA MOHINI. **66 I.C. 38=25 C.W.N. 403.**

———*Maintenance — Rate of — Circumstances.*

The amount of maintenance does not depend on the value of the family properties at the time of the death of the husband but upon the extent of the property, the position of the family, the nature of the claim alleged, the number of members of the family, and other special circumstances of each individual case and it may be varied from time to time. (*Mookerjee and Carnduff, JJ.*) SUKANSAHU *v.* GANGAJALI. **13 I.C. 136.**

———*Maintenance—Rate of—Widow.*

A widow is entitled to suitable residence and reasonable maintenance. In fixing the rate, regard must be had for reasonable wants and her position. (*Shadi Lal and Le-Rossignol, JJ.*) KEWATI *v.* CHANDULAL. **36 I.C. 983=123 P.R 1916.**

———*Maintenance—Rate of—Widow.*

A Hindu widow is not entitled for her maintenance to an amount equal to her husband's share in the income of the family unless the amount is so small that it would just suffice for her maintenance. (*Sadasiva Aiyar and Burn, JJ.*) VISALAKSHI AMMAL *v.* NARAYANASWAMI AIYER. **10 L.W. 540=53 I.C. 796=(1919) M.W.N. 878.**

HINDU LAW—Maintenance—Rate of.

———*Maintenance—Rate of—Payment for a long time—Presumption.*

In fixing the amount of maintenance what is to be regarded is the condition of the estate and the number of people who have claims upon it for maintenance. Remote relations are entitled to smaller amounts of maintenance than their predecessors. 4 I. C. 302, Foll. *Semble*:—Where the same rate of maintenance has been paid for a long time in a particular family, the presumption is that it is the rate to which the members of the family are entitled. (*Wallis, C.J. and Seshagiri Iyer, J.*) SUGUTUR IMMIDY PEDDA CHIKKA *v.* SUGUTUR SAMBASADASIVA CHIKKA. **43 I.C. 654.**

———*Maintenance — Rate of — If can be varied.*

An amount provided as maintenance for a member of a family is subject to be increased or decreased according to change of circumstances even though an instrument or decree is drawn embodying the arrangement 24 Bom. 386; 14 M.L.J. 389; 5 W.R. 98, *Ref.* (*Sankaran Nair and Spencer, JJ.*) VENKATAPPA NAYANIM *v.* THIMMA NAYANIM VARU **(1914) M.W.N. 900=27 I.C. 379=27 M.L.J. 656.**

———*Maintenance—Rate of—Widow—Right of widow of co parcener.*

The amount of the widow's maintenance would be fixed by reference to the income of the family as it stood at the date of her husband's death. But the basis of calculation is the share of the husband as at the date of the suit if he were then alive and not as it was at the date of his death (*Sankaran Nair and Spencer, JJ.*) MANIKKA MUDALIAR *v.* SOBAGIA AMMAL. **25 I.C. 897=27 M.L.J. 291.**

———*Maintenance—Rate of—Widow.*

The principle on which the rate of maintenance for a widow is to be fixed is to see the mode of living of the family during her husband's lifetime, and the extent of the estate and then to award such sum as will enable her to live in the same degree of comfort suited to her position as widow without doing injustice to the other members of the family. So in a Vysya trading family consisting of father and son and their wives having an annual income of Rs. 12,000 and family property worth 4 lakhs, a sum of Rs. 140 a month was awarded as maintenance of the son's widow seeing such

HINDU LAW—Maintenance—Rate of.

families are disposed to save much. (*Wallis*, J.) PUSHPA VALLI THAYARAMMAL *v.* RAGHAVIAH CHETTY. **23 I.C. 413 = 15 M.L.T. 95.**

———*Maintenance — Rate of—Widow — Amount.*

No hard and fast rule can be laid down that a widow is entitled to a particular fraction of the income although she can in no event claim more than the income of the share which the husband would have been entitled to if a division had taken place during his lifetime. (*Benson and Sundara Aiyar*, JJ.) RANGATHAYEE *v* NELLI MUNUSWAMY.
(1911) 1 M.W.N. 322 = 9 M.L.T. 461 = 10 I.C. 110 = 21 M.L.J. 706.

———*Maintenance—Rate of—Widow*—Stridhanam.

A widow's *Stridhanam* must be considered in awarding her the amount of maintenance which is liable to be forfeited on her turning unchaste even after she has obtained a decree for the same. But the case is different with one repenting for her misdeeds, when she may be given starving maintenance as a safeguard against her leading an immoral life. In order to succeed in a case against a widow for the discontinuance of her allowance on the ground of her unchastity, plff. must not only prove unchastity, at the time but for a considerable period. (*Mittra*, A. J. C.) LAXAM BAI *v.* VISHWANATHA ROY. **58 I.C. 860 = 16 N.L.R. 140.**

———*Maintenance—Rate of.*

The husband's will indicating his wish is a good basis for determining the amount of maintenance. 5 I.A. 55, Foll. (*Coutts and Ross*, JJ.) SRIMATI SABITRI THAKURAIN *v.* FREDRIC AMMIE SAVE, **1922 P. 38.**

Maintenance—Right to.

———*Maintenance—Right to—Limits of.*

The wife, the parent and the infant child (but a grandson) are entitled to maintenance and the obligation to maintain them is an obligation attaching to the individual and is independent of there being ancestral or joint family property. (*Lord Dunedin*) GANGADAR RAMRAO *v.* RAJA OF PITTAPUR.
41 Mad. 778 = 35 M.L.J. 392 = 24 M.L.T. 276 = 16 A.L.J. 833 = 28 C.L.J. 428 = 6 Pat. L.W. 267 = 20 Bom. L.R. 1056 = 23 C.W.N. 173 = (1918) M.W.N. 922 = 47 I.C. 354 = 45 I.A. 148 (P.C.) [On appeal 39 Mad. 396 = 28 M.L.J. 624 = 29 I.C. 356 = (1915) M.W.N. 369]

———*Maintenance—Right to.*

A member of a joint family who cannot file a suit for partition without the consent of certain members of the family is incompetent under the Hindu Law to claim maintenance out of the family property. (*Macleod*, C.J. *and Shah*, J.) BHUPAL *v.* TAVANAPPA.
64 I.C. 868 = 23 Bom. L.R. 1236.

HINDU LAW—Maintenance—Suit.

———*Maintenance—Right to—Claim under will—Liability of step-son.*

Where a Hindu lady claims maintenance under the will of her deceased husband, she can enforce the claim against the son as well as the step-son. 16 C. 758, Dist. (*Mookerjee and Chotzner*, JJ.) PULIN BEHARI DEY *v.* SATYA CHARAN DEY. **36 C.L.J. 367 = 1923 Cal. 79.**

———*Maintenance—Right to—Fluctuation.*

A right to maintenance is a recurring right, accruing from day to day. It may be extinguished or modified by a change of circumstances. (*Mookerjee and Panton*, JJ.) RATNAMALA DASI *v.* KAMAKSHYA NATHA SEN.
57 I.C. 9 = 31 C.L.J. 351.

———*Maintenance—Right to—Co parcenary interest—Community of interest.*

Though an impartible estate may be for some purposes spoken of as joint family property, the co-parcenary in it, which under the Mitakshara Law is created by birth, does not exist. The right to maintenance cannot be a right which arises out of the co-parcenary interest of the property or which arises out of any community of interest acquired by birth. (*Sankaran Nair and Oldfield*, JJ.) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR.
(1918) M.W.N. 369 = 28 M.L.J. 624 = 29 I.C. 356 = 39 M. 396.

Maintenance—Sister.

———*Maintenance—Sisters — Unmarried—Right of residence in family house.*

Under Hindu Law unmarried sisters have a right to residence in the family dwelling-house until they are married and if the house be sold in execution of a decree for debts incurred by the last male holder or his legal representatives they can resist the auction-purchaser from ousting them out of the portions in their actual occupations till suitable arrangement is made for them. (*Wallis*, C.J. *and Sadasiva Iyer*, J.) SURIA NARAYANA RAO NAIDU *v.* BALASUBRAMANIA MUDALI. **43 Mad. 635 = 38 M.L.J. 433 = 11 L.W. 409 = 56 I.C. 524 = (1920) M.W.N. 267.**

Maintenance—Suit.

———*Maintenance—Suit—Form of decree—Decision as to who should pay.*

In a suit by a Hindu widow for maintenance against several defendants in possession of her husband's estate, the Court should direct that the amount should be paid by one or more of them on particular dates, but it need not decide as to who is legally entitled to the estate. (*Tudball and Sulaiman*, JJ.) SARASUTTI TEWARIN *v.* NANDAN. **18 A.L.J. 828 = 60 I.C. 99 = 2 U.P.L.R. (All) 280.**

———*Maintenance—Suit for*—Quantum.

In all cases where a right to maintenance has been allowed the quantum of maintenance should be decided in the suit itself even though the parties may not have in the first instance provided the Court with the materials. The

HINDU LAW—Maintenance—Suit.

parties entitled to maintenance who are generally females should not be left to separate proceedings. (*Macleod*, C.J. *and Crump*, J.) NILAWA IRAYA *v.* REVANSHIDAYA. **1923 Bom. 419.**

———*Maintenance — Suit — Order under S. 488, Cr. P. C.—Effect of.*

The Civil Court has power to order an additional maintenance if in its opinion the amount awarded by the Magistrate is insufficient. (*Chitty and Teunon*, JJ.) TRINYANI DASSEE *v.* SRICHANDAN BHUYA. **18 I.C. 603.**

———*Maintenance—Suit—Costs of.*

The object of such a suit is to ascertain the liability of the family estate and the costs of doing it should be ordinarily defrayed from the estate and therefore the deft. should not ordinarily be allowed to any costs on the amount disallowed to the plff. unless the claim be an exorbitant one. (*Benson and Sundara Aiyar*, JJ.) RANGATHAI *v* NELLI MUNUSWAMI. (1911) **1 M.W.N. 322 = 9 M.L.T. 461 = 10 I.C 110. = 21 M.L J. 706.**

———*Maintenance — Suit — Claim for, as defendant.*

Where plaintiff sued by survivorship the defendant, widow of a deceased co parcener and the widow claimed partition which was negatived, the Court is not bound to grant her maintenance in that suit as a defendant. (*Stuart and Kanhaiya Lal.* A.J.CS.) SURAJ BAKSH *v.* SUKHDEV. **32 I.C. 291 = 2 O.L.J. 502.**

Maintenance—Widow.

———*Maintenance — Widow — Right to separate maintenance — Living away from family house for good cause—Right not affected —Custom.*

The plea set up in defence to a suit for maintenance by a widow who had ceased to reside in the family dwelling house was a family custom under which, it was alleged, a widow, unless she resided at the place appointed for her residence, forfeited her right to maintenance. *Held* that such a custom, even if proved, did not affect the case of an absence from the appointed residence due to just and reasonable causes and that the widow was entitled to claim maintenance. (*Lord Buckmaster*, J.) RAJA BRAJA SUNDAR DEB *v.* SRIMATI SWARANA MANJARI DEBI. **22 C.W N. 433 = 47 I.C. 36 = (1918) M.W.N. 313 (P.C.),**

———*Maintenance—Widow — Allotment of large properties—Nature of estate.*

Where on a partition between surviving brothers, properties are allotted to their predeceased brother's widow corresponding to the share which that brother would have taken had he lived at the date of partition, it must be taken that the widow was intended to take a limited estate in the properties allowed to her with

HINDU LAW—Maintenance—Widow.

reversion on her death to the donors or their heirs. 34 A. 234; 6 M. I. A. 1 Ref. (*Piggott and Walsh*, JJ.) JHABBU LAL *v.* JWALA PRASAD. **4 U.P.L.R (A) 106 = 1922 All 531.**

———*Maintenance—Widow—Right of residence.*

The right of residence of a widow cannot prevail against alienation during husband's lifetime. (*Rafique and Piggott*, JJ.) RAMZAN *v.* RAM DAIYA. **40 All. 96 = 42 I C. 914 = 16 A.L.J. 922.**

———*Maintenance — Widow— Residence— Family house—Disagreement.*

A Hindu widow and her mother-in-law were ordered to reside in the same family house, with liberty to the former to apply, so that in future if the family disagreements became so acute that it really would not be desirable that she and her mother-in-law should be living under the same roof it should be possible for her to come to the Court and ask that residence should be provided elsewhere for her mother-in-law. The order though unusual was warranted by the circumstances of the case. (*Macleod*, C.J. *and Shah*, J.) LAKSHMIBAI NARAYAN RANGO *v.* NARBADABAI RANGO. **24 Bom.L.R 235 = 1922 Bom. 28.**

———*Maintenance—Widow—Right of residence.*

A widow cannot enforce her right of residence in a house sold by her husband. (*Shah and Crump*, JJ.) GANGABAI *v.* JANKIBAI. **22 Bom. L.R. 1309 = 59 I.C. 583 = 44 B. 337.**

———*Maintenance—Widow—Claim against surviving co-parceners personally and against properties.*

A relief claimed by a widow for maintenanc from the co-parceners of her deceased husband is not a claim against them personally but as heirs of her husband and so can be joined with a claim against them for her *stridhanam* improperly detained by them. (*Davar*, J.) JANKIBAI *v.* SRINIWASH GANESH. **38 Bom. 120 = 20 I.C. 533 = 15 Bom. L.R. 684**

———*Maintenance—Widow—Residence.*

A Hindu widow does not forfeit her right to maintenance by going to reside elsewhere, unless she goes for an improper purpose. (*Beaman and Hayward*. JJ.) PARVATI BAI BHAGIRATH *v.* CHATRU LIMBAJI. **36 Bom. 131 = 12 I.C. 708 = 13 Bom. L R. 1023.**

———*Maintenance—Widow—Right to separate maintenance.*

A Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenanee by going to reside elsewhere unless she leaves the house for an improper purpose. (*Mookerjee and Carnduff*, JJ.) SUKANSAHU *v.* GANGAJALI. **13 I.C. 136.**

HINDU LAW—Maintenance—Widow.

———*Maintenance — Widow — Right of residence in husband's house—Purchaser for value.*

Ordinarily, a Hindu widow has a right of residence in the family house from which she may not be ousted except to satisfy claims which are paramount to her right of residence, as it forms a part of her right to maintenance. The widow of an undivided member of a Hindu family can set up her right of residence against a purchaser for value, unless the alienation was for family purposes but the widow of a divided member must liquidate any debt which was binding on her husband unless it was incurred in fraud of her right. When, however, the husband loses the property in his lifetime, there is nothing left to the widow, from which she can derive maintenance. (*Le Rossignol*, J.) ASSA DEBI *v.* BASHI RAM. **56 I.C. 198=2 U.P.L.R. 98.**

———*Maintenance—Widow — Unchastity—Agreement.*

An agreement with the reversioner by a widow was that the widow should lead a chaste life and take her residence in her deceased husband's house, and receive maintenance so long as she remains chaste. *Held*, chastity was a condition defeasant and if she took an immoral life there was forfeiture of the right of maintenance. (*Shah Din*, J.) TARA DEVI *v.* DHANPAT RAI. **31 I.C. 797= 150 P.W.R. 1916.**

———*Maintenance—Widow—Share allotted in lieu of maintenance—Nature of estate.*

A widow who is allotted a share in lieu of maintenance has only a woman's estate in it. Mutation in favour of a widow jointly with the surviving co-parceners indicates allotment of share in lieu of maintenance. (*Rattigan and Leslie Jones*, JJ.) CHANDAN MAL *v.* MUSAMMAT WASINDI BAI. **92 P.R. 1916= 31 I.C. 511=168 P.W.R. 1916.**

———*Maintenance—Widow—Right of.*

A person is bound to maintain the widow of his deceased grandson so long as she does not re-marry and continues to live in the house of her deceased husband. 115 P. R. 1893, Rel. on. (*Shah Din and Scott-Smith*. JJ.) LADHA *v.* KARIM BIBI. **269 P.L.R. 1913= 20 I.C. 297=168 P.W.R. 1913**

———*Maintenance—Widow—Chastity if a condition.*

Where there is an agreement for maintenance so long as the widow leads chaste life and she leads an unchaste life, *whether* the agreement will be revived if she gives up her present way of living. (*Scott-Smith* J.) TIKA RAM *v.* WASANDI BAI. **9 I.C 926= 19 P.W.R. 1911.**

———*Maintenance—Widow — Right to—Other means.*

A plea that a Hindu widow has another means of support ought not to be allowed to be raised in a suit by her for maintenance out of joint family property. 28 Mad. 183, Foll. (*Sadasiva Iyer and Bakewell*, JJ.) KALINI UTHARANKANT PURAKKAL *v.* EAZUVAN RAMAN. **30 I.C. 897.**

———*Maintenance—Widow— Unchastity—Effect—Agreement for maintenance.*

Where maintenance is secured by an instrument in writing it is only evidence of the amount payable and subsequent unchastity of the widow puts an end to her right though secured by writing. (*Ayling and Seshagiri Iyer*, JJ.) SATHYABHAMA *v.* KESVACHARYA. **39 Mad. 658=29 M.L.J. 87= 29 I.C. 397=18 M.L.T. 28.**

[**Also** (*Scott-Smith*, J.) TIKA RAM *v* WASANDI BAI. **9 I.C. 926=19 P.W.R. 1911.**]

———*Maintenance—Widow — Right to—Family properties—Subsequent adoption—Charge.*

The widow of an undivided co-parcener was allowed a certain maintenance from the common funds in the hands of the surviving co-parceners. She adopted a boy subsequently and a partition of all interests including those of the adopted boy was made, *held*, that the adopted boy alone was liable to maintain his adoptive mother out of his share in the absence of any agreement to the contrary at the time of partition. (*Wallis*, C.J. *and Ayling*, J) VENKATARAMAN *v* SUBRAMANIA IYER. **28 I.C. 240=(1916) M.W.N. 187.**

———*Maintenance— Widow—Deceased co-parcener.*

Right of widows of deceased co-parceners to be maintained out of family properties is an absolute right due to their being members of the family and does not depend on their not possessing other means of support. The fact that family property was small is no ground for altogether disallowing the claim of maintenance. 4 C.L.J. 74, Dist. (*Benson and Sundara Iyer*, JJ.) DARMA LINGAYYA *v.* DARBHA KANAKAMMA. **38 Mad. 153= 28 I.C. 200=28 M.L.J. 260.**

———*Maintenance—Widow—Co-parcener.*

The right of a widow of a deceased co-parcener to maintenance is not affected by a subsequent partition and can be enforced against the whole undivided family, (*i.e.*), all the co-parceners who can be traced to a common ancestor and not against the branch of the family only to which the plff's. husband belonged. 16 Cal. 25, Dist; 27 Mad. 45, Expl. (*White* C.J. *and Munro*, J.) SUBBARAYUDU CHETTY *v* KAMALAVALLI THAYARAMMA. **35 Mad. 147=21 M.L.J. 493= 10 M.L.T. 1=10 I.C. 347= (1911) 2 M.W.N. 148.**

———*Maintenance— Widow— Unchastity—Decree—Agreement for maintenance—Starving maintenance.*

A Hindu widow's right to claim maintenance is forfeited upon her unchastity. 5 Cal. 776; 17 Cal. 674, Ref. Where in a suit for

HINDU LAW—Maintenance—Widow.

maintenance a compromise is arrived at fixing a maintenance allowance and a decree is passed in the terms of the compromise, the allowance is liable to resumption or forfeiture on proof of subsequent unchastity on her part. 15 All. 382; 26 All. 321; 17 Mad, 342; 34 Mad. 653, Foll. An unchaste widow is entitled at least to a starving maintenance, 34 Bom. 278, Ref. (*Mitra*, J C.) MUSSAMMAT LAXMI BAI *v.* PANDIT YISHWAN RAO. 53 I.C. 860= 16 N.L R. 140.

——*Maintenance— Widow— Unchastity— Returning to virtue—Right of.*

An unchaste widow who returns to a life of virtue upon the general principles of the Hindu Law, can get bare maintenance from her deceased husband's family. (*Stuart*, J.C.) DWARKA PRASAD *v.* MAHADEI. 51 I C. 388=6 O L J. 166.

——*Maintenance—Widow—Right to possession—Separate share—Partition.*

A widow cannot ordinarily have separate possession of a portion of the estate for the maintenance so long as the family is joint but if the male members of the family effect a partition, the widow is entitled to have a separate share. (*Lindsay*, A.J.C.) CHANDIKA SINGH *v* RAM DULARI. 12 I C. 403.

——*Maintenance Widow—Daughter.*

Under the Hindu Law, a widow and daughter have a right to be maintained out of the property of the husband or father and the right can be enforced against the transferee. (*Sharfuddin and Chapman*, JJ.) BRAJSUNDER DEB *v.* SARAT KUMARI. 2 Pat. L J 55= (1917) Pat. 67=38 I.C 791= 3 P L.W. 202.

——*Maintenance —Widow— Residence— Right of—Purchaser of property—Right if enforceable against him.*

A Hindu widow is entitled to reside in the family house and this right cannot be denied to her by a purchaser of the house with notice of her right. Even a purchaser without notice cannot evict her unless she is provided with another residence. But where the sale is effected by her husband or is for discharging a debt due by him, she has no such right. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PRAKASH. 69 I.C. 602.

——*Maintenance—Widow—Right of residence.*

A right of residence of a Hindu widow is only an equitable and not a legal right, and means a right to the provision of residence and is included in the right to maintenance. A widow's residence does not imply a right of possession of the house or the part of the house that she occupies. For the co-parceners may from time to time alter the provision for residence in accordance with any change in the fortunes of the family and may require her to reside in another house or another part of the same house. The right of maintenance of a

HINDU LAW—Maintenance—Wife.

Hindu widow is an equity binding on the conscience of the co-parceners but it may be defeated by *bona fide* alienation *i.e.*, an alienation made for proper purposes as for the discharge of family debts or to satisfy claims enforceable against the whole family. It cannot be defeated by an alienation which is not so justified or which is merely a pretext to shuffle off the obligation of maintenance. In the case of an improper alienation the equity is enforceable against the alienee under the same conditions that apply to any other equity. That means the transferee takes subject to the equity unless he has taken for value and without notice of the right. (*Pratt and Hayward*, JJ.) THAWAR DAS MANGHUMAL *v.* MST. VANI, WIFE OF GULABSINGH. 10 I.C. 983= 4 S.L.R. 278.

——*Maintenance—Widow—Right of.*

A widow is not bound to accept the charity of collateral relations for her maintenance or the payment of debts incurred for maintenance. She is entitled to reasonable maintenance including the provision for religious observances of annual *shradhs* and the payment of reasonable maintenance debts out of the immoveable property. (*Hayward*, A.J.C.) RATAUSI *v.* UMREBAI. 9 I.C. 997.

Maintenance—Wife.

——*Maintenance— Wife— Unchastity.*

An unchaste wife at date of suit is disqualified even for bare maintenance. *Quaere*:—Whether a previously unchaste widow who turned chaste at the time of suit is entitled to maintenance. (*Banerji and Walsh*, JJ.) DEBI SARAN SHUKUL *v* DAULATA SHUNKLAIN. 39 All. 234=39 I.C, 10=15 A.L.J. 169.

——*Maintenance—Wife— Separate maintenance—Second marriage of husband—Cruelty.*

The fact that a Hindu husband takes a second wife and neglects the first wife is not legal cruelty justifying a claim by the latter for separate maintenance. (*Rafique*, J.) ADLI *v.* MUSAMMAT PERSOMI. 18 I.C. 713= 11 A.L.J. 161.

——*Maintenance— Wife— Unchastity — Wife deserting husband.*

A Court should not impute unchastity to a married woman on mere suspicion but only on strong and sure grounds. 32 All. 410 (P.C.), Foll. To support a wife's claim for separate maintenance from her husband she must show that he abandoned, deserted or expelled her without justifying cause. A wife by voluntarily deserting her husband loses her right to separate maintenance from him. (*Batchelor and Hayward*, JJ.) YESUBAI BHARTER *v* SADASIV GANESH DESHPANDE. 30 I.C. 934.

——*Maintenance—Wife—Refusal to live with husband—Leprosy.*

Under the Hindu law, a wife is entitled to get maintenance from her husband when she declines to live with him on account of his being

HINDU LAW—Maintenance—Wife.

a leper. 5 B. H. C.R. 209, Rel. (*Spencer and Venkatasubba Rao*, JJ.) SHENAPPAYA *v.* RAJAMMA. **44 Mad. 812=43 M.L.J. 174=16 L.W. 139=(1922) M.W.N. 459=31 M.L.T. 412=1922 Mad. 399 (H.C.)**

———*Maintenance—Wife—Unchastity.*

An unchaste Hindu wife is not entitled to maintenance from her husband. But if she subsequently repents and leads a moral life at the date of suit she is entitled to bare maintenance. 17 Cal. 674 ; 34 Bom. 278 ; 17 Mad. 392 ; 19 Mad. 6 ; 5 M.H.C.R. 150 ; 23 M.L.J. 289, Dist. (*Ayling and Seshagiri Aiyar*, JJ.) SATHYABHAMA *v.* KESAVACHARYA. **39 Mad. 658=29 M.L.J. 87=29 I.C. 397=16 M.L.T. 28.**

———*Maintenance—Wife—Adultery.*

No maintenance can be claimed by a wife from her husband if at the time of the suit she is living in adultery and persists in that course. 19 Mad. 6; 34 Bom. 278, Foll. (*Miller and Sankaran Nair*, JJ.) SUBBAYYA *v.* BHAWANI, **24 I.C. 390,**

———*Maintenance—Wife—Unchastity.*

Under the Hindu Law unless a wife's unchastity is condoned by her husband or there is proof of her reformed character, she cannot claim any maintenance from him. (*Benson, O.C.J. and Napier*, J.) CHIRUKALA NAGALAKSHAMMA *v.* CHIRUKALA VISWANATHA SASTRY. **16 I C. 389=23 M.L.J. 289.**

———*Maintenance — Wife — Residence—Right in husband's house.*

A wife has no right of residence in the family house and her husband can therefore dispose of the family dwelling house even though it has the effect of depriving the wife of her residence therein. The text of the Katyayana cannot be taken literally so as to debar the husband from alienating the family residence to the detriment of his wife's residence in it. 12 Mad. 60, Ref. (*Abdur Rahim and Ayling*, JJ.) OLAGAYEE *v.* PICHAMMAL. **21 M.L.J. 303=(1911) 1 M.W.N. 179=9 I.C. 524=9 M.L.T. 311.**

Manager.

See HINDU LAW—
(1) ALIENATION BY MANAGER.
(2) JOINT FAMILY—MANAGER.

Marriage.

CAPACITY TO GIVE.
CEREMONIES.
DISSOLUTION.
DIVORCE.
ELIGIBILITY FOR.
EVIDENCE OF.
EXPENSES.
FACTUM VALET.
FORM OF.
RE-MARRIAGE.
WIDOW.

HINDU LAW—Marriage—Capacity to give.

Marriage—Capacity to give.

———*Marriage—Capacity to give—Guardian of marriage—Maternal and paternal relatives—Injunction—Reasonable and probable.*

According to the Hindu Law, in the presence of competent paternal relatives, the maternal relatives of a girl cannot give her in marriage except where the paternal relatives refuse to act or have disqualified themselves from acting. A Hindu girl living with her paternal aunt and paternal uncle was made over to her maternal uncle under an agreement between the parties. Subsequently the paternal aunt's application to be appointed guardian was dismissed. Afterwards, the maternal uncle of the girl arranged for her marriage with a certain person. The paternal aunt then obtained a temporary injunction and got the wedding put off. The marriage, however, took place with the person selected by the maternal uncle, the maternal uncle sued for damages for the loss caused by the wrongful injunction and the postponement of the wedding. *Held*, that the maternal uncle could enter into a contract of marriage for the girl. (*Piggott and Lindsay*, JJ.) KASTURI *v.* PANNA LAL. **38 All. 520=36 I.C. 245=14 A.L.J. 754.**

———*Marriage—Capacity to give—Mother—Paternal uncle—Will—Construction.*

The paternal uncle of a girl cannot betroth or give her in marriage without the concurrence of the mother, who after the father, is the legal guardian of the girl. This is so even where the paternal uncle is authorised to conduct the marriage by the father's will. (*Chandavarkar, A.C.J. and Batchelor*, J.) BAI RAMTORE *v.* JAMNADAS. **37 Bom. 18=17 I.C. 95=14 Bom. L.R. 766.**

———*Marriage—Capacity to give—Mother's rights—Absence of consent of father.*

The rules as to the duty of giving a girl in marriage are directory and not mandatory, and in the absence of force or fraud, the marriage of a girl performed by the mother without the consent of the father is perfectly valid. (*Moti Sagar*, J.) JAGANNATH *v.* BASANT RAM, **1923 Lah. 95 (2).**

———*Marriage—Capacity to give—Mother—Consent of uncle.*

Under the Hindu Law, the mother is, after the father, the guardian of her minor daughter, and her right to select a husband for her daughter is not fettered by any necessity to consult or obtain the consent of the girl's paternal uncle. (*Abdul Raoof and Martineau*, JJ.) MT. JIWANI *v.* MULA RAM. **3 Lah. 29=1922 Lah. 112.**

———*Marriage—Capacity to give—Mother.*

In the absence of paternal relations and father through death or waiver, the right of mother to select the husband is recognised in the Hindu Law. (*Shadi Lal and Le-Rossignol*, JJ.) MAYA DEVI *v.* RAM CHAND. **20 P.R. 1916=31 I.C. 186=177 P.W.R 1915.**

HINDU LAW—Marriage—Capacity to give.

———*Marriage—Capacity to give—Texts.*

The texts relating to the marriage of a girl deal only with religious rites of making the gift of the bride and are only directory and not mandatory and even from the religious point of view create no legal right or obligation (*Benson and Sundara Iyer*, JJ.) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR. **35 Mad. 728=21 M.L.J. 600=10 M.L.T. 57=11 I.C. 570=(1911) 2 M.W.N. 285.**

Marriage—Ceremonies.

———*Marriage—Ceremonies—Marriage fees.*

If the ceremony of marriage is taken as a whole and performed in the Hindu form, the Joshi is entitled to his fee, but if it is found that the form is in the *Pancha Kalas Lingayat*, then he is not entitled to his fee. The marriage ceremony is to be taken as a whole to decide whether it is in the Hindu form or in the *Pancha Kalas Lingayat*. 14 Bom. 167, Expl. (*Scott*, C.J. *and Batchelor*, J.) RANGAPPA NINGAPPA IMMADI *v.* VENKAT BHAT LINGAM BHAT JOSHI. **40 Bom. 112=31 I.C. 448=17 Bom. L.R. 950.**

———*Marriage—Ceremonies.*

The rules of Hindu Law as to the obligation of giving girls in marriage are directory and not mandatory and if the marriage is otherwise valid, in the absence of force or fraud, it will not be invalidated owing to the absence of consent of the proper guardian. 14 Mad. 316; 19 All. 515; 22 Bom. 812, Rel. on. (*Shadi Lal and Le-Rossignol*, JJ.) MAYA DEVI *v.* RAM CHAND. **20 P.R. 1916=31 I.C. 186=177 P.W.R. 1915.**

———*Marriage—Ceremonies—Necessity for.*

Where there were no ceremonies performed in a caste in which ceremonies ordinarily are in use or where marriage is not performe din any customary form, no marriage by mere mutual consent alone is valid unless a custom to that effect is proved. (*Miller and Abdur Rahim*, JJ.) VISVANATHASWAMY NAICKER *v.* KAMU AMMAL. **21 I.C. 724=24 M.L.J. 271.**

———*Marriage—Ceremonies—Necessary to constitute valid marriage.*

No prescribed ceremony is necessary to constitute marriage provided that if any ceremony is customary and regarded by the caste as essential then it must be performed. The ceremony of is *saptapade* necessary to complete a marriage performed according to the orthodox rights and that of Vivah Hom is also usually performed but their non-performance does not invalidate a marriage if otherwise completed. (*Mc Coll*, J.) RAMPIAYER *v.* DEVA RAMA. **1 R. 129=1923 Rang. 202.**

Marriage—Dissolution.

———*Marriage—Dissolution—Minor—Right to repudiate on attaining majority—Restitution of conjugal rights.*

HINDU LAW—Marriage—Divorce.

Underthe Hindu Law a marriage once performed cannot be dissolved for any reasons whatsoever, even though the parties were minors and a Hindu wife cannot repudiate her marriage as soon as she comes of age or before consummation takes place merely on the ground that the marriage has been performed during her minority. If the girl purports to repudiate the marriage it is not a sufficient ground for refusing a decree for restitution of conjugal rights. (*Abdul Raoof and Moti Sagar*, JJ.) MUNSHI *v.* MT. BHAGWANI. **13 P.L.R. 1922=1922 Lah. 79.**

———*Marriage—Dissolution.*

Marriage is not severed by mere desertion. (*Kumarswami Sastri and Odgers*, JJ.) PACHAI PILLAI *v.* O. GOPAL PILLAI. **15 L.W. 15=70 I.C. 122=42 M.L.J. 276.**

———*Marriage — Dissolution — Power of Court.*

No Court has jurisdiction to grant a decree for dissolution of marriage in a suit for that purpose by the wife, except in a case under the Native Converts Marriage Act. (*Stanyon*, A.J.C.) CHANDRABHAGA *v.* VIVANATH. **20 I.C. 557=9 N.L.R. 102.**

Marriage—Divorce.

———*Marriage—Divorce—Custom — When valid.*

A custom by which marriage-tie can be dissolved by either husband or wife against the wish of the divorced party and for no reason but out of mere caprice, the sole condition attached being a payment of a sum of money fixed by the caste, is opposed to public policy within the meaning of S. 23 and is also repugnant to Hindu Law and therefore cannot be judicially recognised. (*Scott*, C.J. *and Batchelor*, J.) KESMAY BHARGONAN v. BAI GANDI. **39 Bom. 538=29 I.C. 952=17 Bom. L.R. 584.**

———*Marriage—Divorce—Re-marriage.*

Re-marriage of a divorced *Koli* woman is valid and is not regarded with any social censure or disapproval. The distinctive mark of the *asura* form of marriage is the payment of money for the bride, and absence of such payment of a bride-price is a distinctive mark of the approved form. The marriage of a divorced *Koli* woman should not be regarded as marriage in an unapproved form when the father giving the woman away receives no pecuniary benefit from the marriage. (*Batchelor and Rao*, JJ.) HIRA *v.* HANSJI PEMA. **37 Bom. 295=17 I.C. 949=14 Bom. L.R. 1182.**

———*Marriage—Divorce*—Kunbis *of* Mauza Bichwa Bagu.

Among *Kunbis* of *Bichwa Bagu* in the Chhindwara District, the formal relinquishment by a husband of all claim to his wife and

HINDU LAW—Marriage—Divorce.

the latter's consent thereto constitute a valid divorce. (*Hallifax and Macnair*, A.J.Cs.) JANGLA *v.* JHINGRYA. **63 I C. 594.**

———*—Marriage—Divorce—Validity of custom—Change of religion.*

The Hindu Law does not recognise divorce though the Courts do recognize it upon proof of custom. A change of religion does not dissolve the marriage tie. (*Lindsay*, J.C.) ABDUL KARIM *v.* ABDUL RAZAK. **28 I C. 201=2 O.L.J. 101.**

Marriage—Eligibility for.

———*—Marriage—Eligibility for Banya and the illegitimate daughter of a Brahmin.*

A marriage between a Banya and the illegitimate daughter of a Brahmin father and Banya mother is valid according to Hindu Law especially when the marriage was recognised by the caste to which the husband belonged. 28 All. 458 ; 16 Cal. 264, Ref. Illegitimacy is no disqualification for marriage. (*Chamier*, J.) MADAN GOPAL *v.* EMPEROR. **34 All. 589= 16 I.C. 513=13 Cr. L.J. 705=10 A.L.J. 82.**

———*—Marriage—Eligibility—Brahmin and Sudra — Children of marriage* — Nihang Goshian—*Custom.*

A marriage between a man of a lower caste (*i.e.*) a *Thakur* and woman of a higher caste (*i.e.*) a *Brahmin* is not lawful and the issue of such marriage is not legitimate. The fact that both the man and woman had, previous to their marriage, became *Nihang Goshains*, a celibate order, would not, in the absence of a custom to the contrary, render the union valid. 28 All. 458, Foll. (*Piggott*, J.) SESPURI *v.* DWARKA PRASAD. **16 I.C. 222 (1)= 10 A.L J. 181.**

———*—Marriage— Eligibility for— Vaishya male and daughter of Sudra woman.*

According to Hindu Law, the marriage between a Vaishya male and the illegitimate daughter of a Vaishya born of a Sudra woman is valid. (*Macleod*, C. J. *and Shah*, J.) BAI GULAB *v.* JIVANLAL HARILAL. **24 Bom. L.R. 5=1922 Bom. 32.**

———*—Marriage — Eligibility — Intercaste Brahmin and Sudra — Marriage invalid—Estoppel.*

The marriage between a Brahmin woman and a Sudra is illegal and void under the Hindu Law and the woman is not entitled to maintenance unless her connection with him has been of a continuous character. There is no estoppel against the validity of a marriage from the mere fact that the parties who are legally incompetent to marry each other went through the Hindu ceremony of marriage and thereafter lived together for several years as husband and wife. (*Chandavarkar and Batchelor*, JJ.) BAI KASTURI *v.* JAMANDAS, **16 I.C. 133=14 Bom. L.R. 517.**

HINDU LAW—Marriage—Eligibility for.

———*Marriage — Eligibility for — Intermarriage between sub-divisions of Sudra caste —Custom.*

According to law and custom in Bengal, a marriage between a Kayastha and a Tanti both belonging to sub-divisions of the Sudra caste is valid in the absence of special custom to the contrary. (*Sanderson*, C.J. *and Richardson*, J.) BISHWANATH DAS *v.* SARASIBALA DASI, **48 Cal. 926=66 I.C. 590=25 C.W.N. 639.**

———*Marriage—Eligibility for—Brahmins and Khatris.*

By custom, general or special, a marriage between a Khatri male and a Brahmin woman may be valid, but it is void under the Hindu Law. (*Broadway*, J) PARS RAM *v.* HUKMAN SINGH. **73 I.C. 289.**

———*—Marriage — Eligibility* — Sagotras—*Custom—Sudras.*

The prohibition of marriage between Sagotras applies only to the twice born classes. When a marriage among sudras between Sagotras is recognised as valid by custom the onus of proving that it is invalid lies on the person alleging it. (*Shadi Lal and Le-Rossignol*, JJ.) AMAR SINGH *v.* JAI SINGH.. **80 P.R. 1917= 42 I.C. 351=138 P.W.R. 1917.**

———*—Marriage — Eligibility — Different castes—Custom—Burden of proof.*

Jhabra Rajputs are not Kshatriyas and not being in any way above the Sudras, the marriage between them and Tarkhani women is not a marriage between a higher caste and lower, It is valid and the issues are legitimate. The burden of proving its invalidity by a special custom is on the contesting party. *Obiter.*—A girl cannot now be taken into a different caste by marriage, unless by a special local custom. (*Jhonstone and Chevis*, JJ.) HAR DAYAL *v.* KALI RAM, **66 P.R. 1911= 138 P.W.R. 1911=10 I.C. 152= 145 P.L.R. 1911.**

———*—Marriage—Eligibility—Wife's sister's daughter—Telugu country.*

The marriage of a Hindu with his wife's sister's daughter is not illegal. The custom of allowing a Brahmin to marry his wife's sister's daughter has been recognised by judicial decisions ; that custom applies especially in the case of Sudras, such as Telugu Velamas who generally follow the Brahmin custom. The rule in *Grihya Parisishta* prohibiting such a marriage among the twice-born classes is merely directory and not mandatory. (*Wallis*, C.J. *and Krishnan*, J.) RAMAKRISHNA RAO *v.* SUBBANA RAO GARU, **43 Mad. 830= 39 M L.J. 183=(1920) M.W.N. 474= 59 I.C. 268=12 L.W. 185.**

HINDU LAW—Marriage—Eligibility for.

———*Marriage — Eligibility — Sudras—Marriage of different sects.*

There is nothing in Hindu Law prohibiting marriages between persons belonging to different sections or sub-divisions of the Sudra caste, 15 Cal. 708, Foll. Ahirs whether of the *Nandvansi* or any other sub-castes, are Sudras and the *Dauwa* Ahirs are a lower caste than the pure Ahirs and the *Churi* form of marriage is in vogue among them. (*Mittra*, A.J.C.) DOMAR SINGH *v.* HIRONDI BAI. **54 I.C 294.**

———*Marriage— Eligibility—Sikhs—Inter-caste.*

Among Sikhs marriage between members of different castes is valid, provided both of them have adopted the Sikh religion. (*Lyle and Ashworth*, A.J. Cs.) CHANDIKA BAKSH SINGH *v.* WIDOW OF JAGAN SINGH.
52 I.C. 449=6 O.L.J. 331.

———*Marriage—Eligibility — Sub-castes—Kayasthas.*

Inter-marriages between the sub-divisions of Kayasthas are not against the Hindu Law, though not common in daily life. (*Stuart and Kanhaiya Lal*, A J. Cs.) HAR BAHADUR LAL *v.* CHAND RAJ BAHADUR.
5 O.L J. 655=48 I.C. 400=21 O.C. 298.

———*Marriage — Eligibility for — Inter-castes.*

Inter-caste marriages pre obsolete and considered invalid under Hindu Law. The prohibition, however, does not apply to marriages with a person of hybrid caste of a Brahmin or Kshatriya or Vaishya or Sudra or where such marriages are recognised by the family. The offspring of a Kshatriya is Ugra. (*Chamier*, J.C. *and Evans*, A.J.C.) DARYAI SINGH *v.* NARPAT SINGH. **9 I.C. 71=13 O.C. 375.**

———*Marriage — Eligibility — Sagotras—Baisi Chowrasi Gaddidars.*

The rule against marrying in the same gotra is not a universal rule among Hindus but it is recognised by the Baisi Chowrasi Gaddidars who though originally Non Hindu have adopted Hinduism. (*Chapman and Atkinson*, JJ.) SHAH DEO NARAIN DEO *v.* KUSUM KUMARI.
46 I.C. 929.

Marriage—Evidence of.

———*Marriage—Evidence of—Mental incapacity—Effect of—Presumption in favour of marriage and legitimacy and due performance of ceremonies.*

The objection to a marriage on the ground of mental incapacity depends on a question of decree. *Held*, that in the case before the Board, the evidence of mental incapacity was wholly insufficient to establish a decree of that defect as to rebut the extremely strong presumption in favour of the validity of the marriage. Where a man and a woman were proved to have been recognised by all persons concerned as man and wife, so described in important documents on important occasions and their daughters were respectably married

HINDU LAW—Marriage—Evidence of.

as would be natural in the case of legitimate children; *held*, that these facts, following upon a ceremony of marriage which undoubtedly took place, though its validity attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson.*) MONJI LAL *v.* CHANDRABATI KUMARI. **38 Cal. 700=38 I.A 122=15 C.W.N. 790=(1911) 2 M.W.N. 91=13 Bom. L.R. 534=14 C.L J. 72=10 M.L.T. 53=11 I.C. 502=21 M.L.J. 933 (P.C.).**

———*Marriage—Evidence of—Presumption.*

When a marriage in fact is once established a presumption will arise in favour of a marriage in law, especially where it is celebrated long ago. 13 M.I.A. 141, Ref. The presumption may be rebutted by strong, satisfactory and conclusive evidence. *Morris v. Davies*, 5 Cl. and F. 163, Rel. (*Chanduvarkar and Batchelor*, JJ.) BAI KASHI *v.* JAMNADAS MANSUKH RAICHAND. **16 I.C. 133=14 Bom. L.R. 547.**

———*Marriage—Evidence of—Presumption from cohabitation.*

The presumption in cases of long and continuous co-habitation is in favour of marriage, though the proof of direct evidence of marriage is unsatisfactory. The presumption can be rebutted only by strong, distinct and conclusive evidence and does not arise if the connection is illicit in its origin. Habit and repute may evidence but never can constitute marriage. A connection by adultery may be evidenced, after the adultery ceases, by habit and repute, to be a marriage, where marriage is possible between the parties. But where no valid marriage is possible, no amount of evidence as to habit and repute can establish a marriage. (*Leslie Jones and Broadway*, JJ.) INDAR SINGH *v.* THAKAR SINGH. **2 Lah. 207=63 I.C 387=3 U.P.L.R. (L.) 82.**

———*Marriage—Evidence of—Sikhs.*

Where a Sikh of position has apparently made a woman his lawful wife the presumption is that all formalities in his power have been gone through. The form of marriage among the Sikhs differs from those of the Hindus. Among Jats marriage laws are lax. Where there is a marriage in fact, the presumption is that there was a marriage in law. (*Reid*, C.J. *and Rattigan*, J.) DHALIPKUR *v.* FATTI. **99 P.R. 1913=41 P.W.R. 1913=18 I.C. 930=100 P.L.R. 1913.**

———*Marriage—Evidence of—Treatment.*

When it is known there was no marriage in due form evidence of treatment has no great value. (*Miller and Abdur Rahim*, JJ.) VISHVANATHASWAMI NAICKER *v.* KAMU AMMAL.
21 I.C. 724=24 M.L J. 271.

———*Marriage—Evidence of.*

Where a man acknowledges the children of a woman living with him as his own and treats

them as such in public, the presumption is that the woman is his wife, but this presumption may be rebutted by showing that no marriage could take place between the man and the woman and that the relatives and the castemen who are likely to be invited for marriage were not invited. (*White, C.J. and Sankaran Nair, J.*) CHELLAMMAL *v.* RANGANATHAN PILLAI.
12 I C. 247 = 31 Mad. 277.

Marriage—Expenses.

See also HINDU LAW—
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

———*Marriage—Expenses—Marriage is an obligatory samskara and expenses bind joint family.*

Marriage is an obligatory samskara. The reasonable expenses of performing the marriage of a co-parcener if already incurred out of family funds are necessary expenses and are binding upon the other co-parceners. (*Sundara Iyer and Sadasiva Iyer, JJ.*) SRINIVASA AIYANGAR *v.* THIRUVENGADATHAIYANGAR.
38 Mad. 556 = (1913) M.W.N. 1034 = 15 M.L.T. 307 = (1914) M.W N. 282 = 23 I.C. 264 = 25 M.L.J. 614.

———*Marriage—Expenses of co-parcener.*

Marriage in Hindu Law is a *samskara* and hence the marriage of a co-parcener is a necessity. The texts relating to the marriage of brothers should be construed as illustrative of the general rule. (*Pratt, J.C. and Crouch, A.J.C.*) POHUMAL *v.* NAROOMAL.
19 I.C. 833 = 6 S.L.R. 246.

Marriage—Factum valet.

———*Marriage—Factum valet.*

The marriage of a Hindu girl effected without force or fraud by her relatives even though they are not her natural guardians cannot after it has taken place be declared invalid, for want of consent of the legal guardian on the principle of *factum valet*. (*Griffin and Chamier, JJ.*) KASTURI *v.* CHIRANJI LAL. **35 All. 265 = 18 I.C. 927 = 11 A.L.J. 272.**

———*Marriage—Factum valet—Consent of father.*

A marriage, duly solemnised and is otherwise valid, is not rendered void, because it was brought about without the consent of the guardian in marriage or was in contravention of an express order of the Court. (*Shadi Lal, C.J.*) GAJJANAND *v.* CROWN. **64 I C. 500 = 2 Lah. 288.**

———*Marriage — Factum valet — Person giving in marriage incompetent factum valet.*

It is established that when a person not strictly entitled to do so gives a girl in marriage the doctrine of factum valet prevails. (*Mccoll, J.*) RAMPIAYAR *v.* DEVA RAMA.
1 R. 129 = 1923 Rang. 202.

Marriage—Form of.

———*Marriage—Forms of—Presumption.*

The presumption in cases of Hindu marriages is that they took place in the Brahma form. (*Banerjee, J.*) MAGHLI *v.* LADHI.
13 I.C. 644.

———*Marriage—Forms of—Vaishnabs—Kanti form.*

The petitioner, a Vaishnab, applied for letters of administration to the estate of the deceased who was after the death of her husband married to him in Kanti form. *Held*, that marriage by Kantibadal (exchange of garlands) among Vaishnabs is valid. (*Ghose, J.*) BENODE BEHARY AUDIKARY *v.* SHASHI BHUSAN BHUR. **59 I.C. 882 = 24 C.W.N. 958.**

———*Marriage—Forms of--Cost of marriage paid by bridegroom.*

According to the *Brahma* form of marriage the cost of marriage must be paid by the bride's parents. If it is paid to them by the bridegroom the marriage is in the *Asura* form. (*Spencer and Ramesam, JJ.*) RATNATHANNI *v.* SOMASUNDARA MUDALIAR.
(1921) M.W.N 635 = 41 M.L.J. 76 = 62 I.C. 931 = 13 L.W. 582.

———*Marriage—Forms of—Brahma form—Payment of Parisam—Effect of.*

Whatever may be the caste to which the parties belong, ordinarily the presumption under the Hindu Law is that a marriage should be regarded as being in the Brahma form unless it can be shown that it was in the Asura form. 32 Mad. 72; 33 Bom. 433; 37 Bom. 295, Rel. The mere payment of *Parisu Panam* by the bridegroom to the bride's parents does not render a marriage one in the Asura form unless in the community to which the parties belong, the payment of *Parisam* is equivalent to the payment of bride-price and the parties in the particular case also regarded it as such. (*Seshagiri Iyer and Phillips, JJ.*) REV. GABRIEL NATHA SWAMI *v.* VALLI AMMAIAMMAL.
26 M.L.T. 348 = (1920) M.W.N. 158 = 53 I.C. 423 = 10 L.W. 491.

———*Marriage—Forms of—Presumption as to the form—Gandharva.*

Where a caste has given up an irregular form of marriage and adopted another regular form, there is no presumption in favour of the old form and hence marriage according to the old form need not be held as valid. Per *Abdur Rahim, J.*—Among Kambala caste the marriage in Gandharva form is not valid. Even among Hindus the form is now obsolete. Per *Miller, J.*—It is doubtful whether the marriage in that form is legal in the present day. (*Abdur Rahim and Miller, JJ.*) VISWANATHASWAMY NAICKER *v.* KAMULU AMMAL.
21 I.C. 724 = 24 M L.J. 271.

———*Marriage—Forms of—Presumption.*

Every Hindu marriage will be presumed to have taken place in the *Brahma* or approved

HINDU LAW—Marriage—Form of.

form in the absence of evidence to the contrary. (*Stanyon*, A.J.C.) MT. CHANDRABHAGA *v.* VISHWANATH. 20 I.C. 557=9 N.L.R. 102.

———*Marriage—Forms of*—Asura.

The *asura* form of marriage not being illegal or immoral the money paid to the bride's parents is not unlawful consideration. (*Lindsay*, J.C.) SHAMBHU *v.* NAND KUMAR. 53 I.C. 963=23 O.C. 284.

Marriage—Remarriage.

———*Marriage — Re-marriage — Married woman—Re marriage during life of husband.*

In the absence of the custom to the contrary a married woman cannot contract a second marriage during her husband's lifetime. (*Richards*, C.J. *and Banerji*, J.) SRI RAM *v.* MUSAMMAT INCHI. 21 I.C. 313= 11 A.L.J. 711.

———*Marriage—Re-marriage—Berar Kunbis.*

Among Kunbis of Berar, widow's re-marriage by Pat form is permitted. (*Stanyon*, A.J.C.) SITARAM *v.* LAXMAN. 17 I.C. 138= 8 N.L.R. 128.

Marriage—Widow.

———*Marriage — Widow — Re-marriage—Custom—Bissa Jaga Brahmins.*

The marriage of a widow of the caste of Bissa Jaga Brahmins is invalid by custom. And a widow of that class on her re-marriage loses her rights in the husband's estate. (*Tudball*, J.) MUSAMMAT ASHARFI *v.* ISARI. 20 I.C. 398=11 A.L.J. 683.

———*Marriage—Widow—Pregnant widow.*

A pregnant widow may re-marry immediately after her first husband's death. Cohabitation is not essential to validate a marriage. (*Shadi Lal*, J.) BHAGAT SINGH *v.* SANTI. 102 P.R. 1919=5 P.W.R. 1919= 50 I.C. 654=32 P.L.R. 1919.

Migrating Family.

See HINDU LAW—APPLICABILITY.

Migration.

See HINDU LAW—APPLICABILITY.

Minor.

See HINDU LAW—MINORITY AND GUARDIANSHIP.

Minority and Guardianship.

See also (1) HINDU LAW—(i) ALIENATION. (ii) JOINT FAMILY.
(2) MINOR.

ACTS OF GUARDIAN.
AGE OF MAJORITY.
APPOINTMENT BY COURT.
CO-PARCENER.

HINDU LAW—Minority and Guardianship—Acts of guardian.

DE FACTO GUARDIAN.
DISPOSITION OF PROPERTY.
JOINT HINDU FAMILY.
LIABILITY OF MINOR.
MARRIAGE.
MOTHER.
NATURAL GUARDIAN.
PROMISSORY NOTE.
RIGHT TO GUARDIANSHIP.
TESTAMENTARY GUARDIAN.

Minority and Guardianship—Acts of guardian.

———*Minority and guardianship—Acts of guardian.*

A guardian or manager of a Hindu family is not empowered to start a new trade so as to bind minor or his interest in family property. Distinction between new trade and ancestral business. (*Sir Lawrence Jenkins.*) SANYASICHARAN MANDAL *v.* KRISHNADHAN BANERJI (1922) M.W.N. 361=16 L.W. 536= 49 I.A. 108=49 C. 560=26 C W N. 954= 20 A L J. 409=24 B L.R. 700= 35 C L J. 498=43 M.L.J. 41= 30 M.L.T. 228=1922 P.C. 237 (P.C.)

———*Minority and guardianship—Acts of guardian—Trade—Partnership.*

A guardian cannot carry on a trade implicating the minor's property therein to liquidate family debts as this does not amount to necessity or benefit to the minor. (*Abdur Rahim and Sadasiva Aiyar*, JJ.) KAKUMANU VENKATA SURYANA *v.* AKUTHOTA RAMAYYA. (1921) M W N. 100=40 M L J 153= 13 L.W. 551=62 I.C. 802=29 M.L.T. 114.

———*Minority and guardianship—Acts of guardian—Alienation of property.*

The guardian of a minor can exercise all the powers which a minor has. Where the guardian of minor widow alienates property he can convey not only the ordinary limited interest possessed by the widow but also the absolute interest which under certain circumstances she can convey. (*Seshagiri Iyer and Burn*, JJ.) SRINIVASA AIYAR *v.* THIRUVENGADA MAISTRY. 26 M L T. 350=55 I.C. 688= 10 L W. 594.

———*Minority and guardianship—Acts of guardian—Acknowledgment on behalf of minor.*

A guardian of a minor cannot renew or acknowledge debts unles it is for the benefit of his ward or unless the document appointing him guardian expressly gives him such power. (*Sadasiva Aiyar and Spencer*, JJ.) CHIDAMBARAM PILLAI *v* VEERAPPA CHETTIAR. (1917) M W.N 744=22 M L.T. 380= 43 I C. 866=6 L W. 640.

———*Minority and guardianship—Acts of guardian—Settlement of accounts.*

A guardian of a minor is entitled to accept accounts on the basis of a mutual open and

HINDU LAW—Minority and Guardianship —Acts of guardian.

current account. (*Benson*, O.C.J., *Sankaran Nair and Sundara Aiyar*, JJ.) SUBBA NAIDU *v.* ETHIRAJAMMAL. **28 I.C. 640 (F.B.).**

——— *Minority and guardianship—Acts of guardian—Settlement of property.*

The guardian of a minor co-parcener may bind the minor by consent given to an alienation by his undivided grandfather of a portion of the family property for the purpose of avoiding the eventuality of the latter effecting a partition and alienating his share. (*Wallis and Miller*, JJ.) ARUNACHALA PILLAI *v.* SAMPURNATHACHI. **26 I C 208= 27 M.L.J. 485.**

———*Minority and guardianship—Acts of guardian—Alienation—Absence of* bona fide *enqnriy by purchaser—Improvements — Good faith.*

The title of the purchaser from the guardian of a minor may be effected by the absence on his part of due and sufficient enquiries. But it does not follow that he did not believe in good faith that he was the full owner at the time he effected improvements on the property. (*Sadasiva Iyer and Seshagiri Iyar*, JJ.) NARAYANA IYER *v.* SANKARANARAYANA IYER. **24 I.C. 940=1 L.W. 369.**

———*Minority and guardianship—Acts of guardian.*

A Hindu mother purchased certain immoveable property in her name with money belonging to her major and two minor sons, *held*, the sale was not void as being in favour of minor sons. 30 Cal. 539 (P.C.) and 4 I.C. 583, Dist. (*White*, C.J. *and Oldfield*, J.) ANDALAMMAL *v.* NARASIMAHACHARIAR. **24 I.C. 927=1 L.W. 379.**

———*Minority and guardianship—Acts of guardian—Alienation—Onus as to necessity.*

Where an alienation by a guardian is questioned by a minor after attaining majority the onus of proving necessity is not always on the defence and if it is shown that the consideration for the alienation went in discharge of previous debts some of which is proved to have been contracted to save the minor's estate the onus is shifted to the minors of showing that the alienation was not for the purpose binding on him. Whether the onus has been shifted in a particular case is a question of fact. 6 M.I.A. 393; 40 Cal. 288, (P.C.), Ref. (*Tyabji and Spencer*, JJ.) KRISHNA RAO *v.* AYYASWAMI PADAYACHI. **(1914) M.W.N. 490=24 I C. 426= 27 M.L.J. 188.**

———*Minority and guardianship—Acts of guardian—Lease—Long term.*

A lease by guardian beyond his powers is not void but only voidable by the minor. Where the guardian appointed under a settlement deed executes a lease in excess of his powers, a natural guardian cannot set aside the lease by mere repudiation but could only do so by getting a decree of the Court. (*Sadasiva Aiyar and Spencer*, JJ.) MUTHUKUMARA CHETTY *v.* ANTHONY UDAYAN. **38 Mad. 867= 15 M L.T. 361=24 I.C. 120=29 M.L.J. 617.**

———*Minority and guardianship—Acts of guardian—Alienation by.*

Per *Sundara Iyer*, J.—The duties of a natural guardian of a minor must be regulated by considerations of what amounts to the interests of the minor. The discretion in the duty of discharging the debts binding on the minor rests on the guardian. The question would be whether that discretion had been properly exercised. The Court should consider whether in the circumstances that existed at the time of alienation the act would be considered as a prudent one by men of ordinary prudence. To constitute pressure or necessity demand by the creditor is not necessary. Considerable latitude must be allowed to the guardian in the exercise of its discretion. Per *Sadasiva Iyer*, J.—If the guardian of a Hindu minor's property after weighing all the then existing circumstances, acts in the best interests of the minor, it is binding on the minor even if the guardian acted wrongly. The alienee is protected, if he acts in good faith after making due enquiry that the guardian's acts appeared for the benefit of the minor. (*Sundara Aiyar and Sadasiva Iyer*, JJ.) VEMBU IYER *v.* SRINIVASA IYENGAR **23 M L.J. 638= 17 I.C. 609=12 M L.T. 547.**

———*Minority and guardianship—Acts of guardian—Debts—Necessity.*

Where the guardian of a minor mortgages the minor's property for purchase of jewels for the minor's wife at the time of his mortgage, the debt is for necessary purpose and binds the interest of the minor in the property mortgaged. (*Wallis and Munro*, JJ.) JANKIPATHI MUNUSAWMI CHETTY *v.* PARTHASARATHY NAIDU. **12 I.C. 708=(1911) 2 M.W N. 477.**

———*Minority and guardianship—Acts of guardian — Settlement of disputes—Minor bound.*

A minor is bound by an honest settlement of disputes the merits of which were doubtful, and which a settlement enabled the minor legitimately to avoid. Honest belief is not conclusive of its binding character. Where the guardian did not make due enquiry into certain circumstances forming the basis of settlement, but the settlement was "fair and prudent" the settlement is binding on the minor and could not be avoided by him. (*White*, C.J. *and Munro*, J.) NATESA IYER *v.* RAMA IYER. **9 M L.T. 498=10 I.C. 221= (1911) 2 M.W.N. 145.**

———*Minority and guardianship—Acts of the guardian—How far binding.*

A Hindu minor is bound by all acts of his guardian if done *bona fide* and for the benefit of the minor's estate. (*Drake Brockman*, J.C.) MANGULAL *v.* MT. NANHI. **5 N L J. 1= 1922 Nag. 104.**

HINDU LAW—Minority and Guardianship—Acts o uardian.

———*Minority and guardianship—Acts of guardian.*

Manager of a joint family represents the minor members in suits although he is not formally appointed as the guardian *ad litem*. (*Kanhaiya Lal*, J.C.) SAT DEO *v.* JAI NATH.

9 O L.J. 141=1922 Oudh 75.

Minority and Guardianship—Age of Majority.

———*Minority and guardianship—Age of majority—Guardian of person appointed.*

The age of majority of a minor for whose person a guardian is appointed becomes fixed by law at 21 and nothing which subsequently happens can reduce it. (*Spencer and Bakewell*, JJ.) JAMBAGULACHI *v* RAJAMANNARSWAMI **57 I.C. 678=11 L W. 596.**

———*Minority and guardianship—Age of majority.*

The age of majority for both males and females under the Hindu Law commences on the completion of the 15th year. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATI RAJU *v.* PATAMSETTY VENKATASWAMI.

40 Mad 925=32 M.L.J. 119=40 I.C. 518=5 L.W. 603.

Minority and Guardianship—Appointment by Court.

———*Minority and guardianship—Appointment by Court—Mother—Supersession of.*

A false charge of immorality made against the (widowed) mother of infants by the brother of the deceased husband in his application for guardianship of the infants must necessarily be considered in any order which might be made by the Court regarding the guardianship, as the mother cannot be expected to live with the family who have made such a charge against her owing to estrangement. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMKAR *v.* MISS BAILEAN. **34 I.C 632=20 C.W.N. 608.**

———*Minority and guardianship—Appointment by Court—Rights of parties.*

No person other than the father or the mother has an absolute right to the guardianship of a minor. Among other relations the nearer one should be preferred. In this case the maternal uncle was preferred to the aunt's son and father's brother's grandson. (*Chapman and Roe*, JJ). LACHMI NARAIN *v.* BALARAM SAHAI. **2 P.L.J. 190=39 I C 662=3 P.L.W. 426.**

Minority and Guardianship—Co-parcener.

———*Minority and guardianship—Co-parcener—Guardianship of property.*

A Court cannot appoint a guardian of the property of an infant co-parcener under the

HINDU LAW—Minority and Guardianship—Joint Hindu family.

Mitakshara Law. (*Fletcher and Chatterjee*, JJ.) JANKI NATH SINGH ROY *v.* JA MINI KANTA SINGH ROY. **22 I.C. 612.**

Minority and Guardianship—De facto guardian.

———*Minority and guardianship*—De facto *guardian—Alienation—Validity.*

An alienation by *de facto* guardian of a minor cannot bind the minor unless it is proved to be for his benefit or for family necessity. 23 M L.J. 244, Foll. (*Sadasiva Iyer and Seshagiri Iyer*, JJ.) KOPPARA KANDIYIL *v.* ANTHALATHIL. **24 I.C. 871.**

———*Minority and guardianship*—De facto *guardian— Step-mother—Power to bind the minor's estate.*

A step-mother, no doubt, is not *de jure* guardian of a minor step-son but she may be his *de facto* guardian and the law is that when the transactions entered into by such *de facto* guardian or such as a prudent manager of the property would have made and are covered by legal necessity or benefit to the minor they can be upheld. (*Prideaux*, A.J.C.) GANPAT *v.* FIRM OF BISSESSARLAL. **1923 Nag. 230.**

———*Minority and guardianship*—De facto *guardian—Alienation—Benefit or necessity.*

A *de facto* Manager of a Hindu minor's estate can, in the case of necessity or for the benefit of the minor, alienate the minor's property. 26 Cal. 820 and 13. I.C. 1125, Foll. Under Hindu Law, the king and no one else is the guardian of minors. (*Stanyon*, A J.C.) SOMWAR PURI GURU CHANDAN PURI *v.* GOPAL SINGH. **49 I.C. 246.**

Minority and Guardianship—Disposition of Property.

———*Minority and guardianship—Disposition of property.*

A minor cannot make a disposition of property *inter vivos* much less by bequest. (*White*, C.J. *and Tyabji*, J). KRISHNAMA CHARIAR *v.* VEERAVALLI KRISHNAMA CHARI.

38 Mad 166=24 M L.J. 517=13 M.L.T. 385=19 I.C. 482=(1913) M.W.N 383.

Minority and Guardianship—Joint Hindu Family.

———*Minority and guardianship—Joint Hindu family.*

Where an application was made by the managing member of a joint Hindu family governded by the Mitakshara Law for being appointed guardian of his minor son and for leave to sell the minor's undivided share in the ancestral property; *held*, that the High Court could under its general powers and apart from the provisions of the Guardians and Wards Act appoint a guardian of the minor's property. 25 B. 353, Foll. (*Greaves*, J.) HARINARAIN DAS, *In re*. **50 C. 141=1923 Cal. 409.**

HINDU LAW—Minority and Guardianship—Joint Hindu family.

———*—Minority aud guardianship—Joint Hindu family—One member of age—Certificate of guardianship of minor members.*

If all the members of a joint *mitakshara* family are minors, an order appointing a guardian of the minors, is a good one. But when one of them comes of age the guardianship ceases *ipso facto*, as regards him, and as there cannot be a guardianship of minors in a joint *mitakshara* family, in which there are also adults, the guardianship ceases also as regards the other minors and the member attaining majority bring rent suits on behalf of himself and the minor members. (*Woodroffe and Richardson*, JJ.) SAMDANI *v.* KAMALA KANTHA. **15 I C. 424.**

———*—Minority and guardianship—Joint Hindu family—Appointment of guardian of person.*

Though a guardian of the ancestral property of a minor member of a joint Hindu family cannot be appointed, a guardian of the person of such minor can be appointed by the Court. 21 I.C. 848; 5 L.W. 374; 41 Mad. 561; 30 Bom. 152; 46 I.C. 815, Dist. (*Spencer and Bakewell*, JJ.) JAMBAGUTHACHI *v.* RAJAMANNARSAMI NADALWAR. **57 I C 678= 11 L W 536.**

———*—Minority and guardianship—Joint Hindu family—Manager—Minor.*

If the Manager of a joint family is a minor and all the other members too are minors the natural guardian of the manager takes the place of the manager and fully represents the joint family. (*Batten*, A.J.C.) BAJI RAO *v.* GULAB SINGH. **17 I.C. 141=8 N.L.R. 136.**

———*Minority and guardianship—Joint Hindu family—Member becoming a lunatic—Appointment of guardian.*

A guardian of the property of a lunatic cannot be properly appointed in respect of the lunatic's interest in the property of an undivided Mitakshara family for no outsider can intermeddle with the property and affairs of a joint Hindu family merely by being appointed the guardian of an incompetent member of that family. Where the members of the joint Hindu family consist of a lunatic father and an adult son, the son must be presumed to be in fact the *karta* or manager of the joint family. (*Atkinson and Manuk*, JJ.) PARAMADUBE *v.* MAHADEO SINGH. **49 I C. 907.**

Minority and Guardianship—Liability of Minor.

———*Minority and guardianship—Liability of minor—Sale of property alleged to belong to minor—Covenant for title—Breach—Liability.*

A guardian of a minor cannot personally bind the minor of covenants entered into on his behalf. The 2nd deft. as guardian sold properties alleged to belong to the minor 1st deft. The vendee was subsequently dispossessed as 1st deft. had no right to the property. In a suit by the vendee for the damages, *held*, that the minor was not liable but that the guardian must be deemed to have entered into the covenant personally and hence liable. 19 Cal. 507, Foll. (*Seshagiri Iyer and Moore*, JJ.) SRINIVASA THATACHARLU *v.* NOOLAMMA. **11 L.W. 246=55 I.C. 436=(1920) M.W.N. 340.**

HINDU LAW—Minority and Guardianship—Liability of minor.

———*Minority and guardianship—Liability of minor—Contract on behalf of minor and for his benefit—Personal liability of minor.*

Per *Ayling and Seshagiri Aiyar*, JJ.—No decree should be passed against a minor or his estate on a contract entered into on his behalf by a guardian, under which no charge is created on the estate, except in cases in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law to which the minor is subject. Per *Chief Justice*,—A decree cannot be passed against a minor or his estate on a contract entered into on his behalf by a guardian for his benefit. 11 Bom. 551, Foll. (*Wallis*, C.J. *Ayling and Seshagiri Aiyar*, JJ.) BATCHU *v.* VAJJULA JAGANNADHAM **42 Mad. 185= 36 M.L J. 29=25 M L T. 23=9 L W 229= 49 I.C 872=(1919) M.W.N. 148 (F.B.)**

———*—Minority and guardianship—Liability of minor—Contracts of guardian.*

A Hindu guardian cannot by his acts, bind the minor with personal liability. The minor's liability, however, for debts properly incurred on his behalf by his guardian can be charged against his estate. (*Seshagiri Iyer and Napier*, JJ.) VENKATASAMI NAICKER *v* MUTHUSAMI PILLAI. **34 M L J 177= 45 I.C 949=23 M L T. 280.**

———*—Minority and guardianship—Liability of minor—Promissory note.*

The estate of a minor is liable for a promissory note debt executed by his mother as guardian even though the mother did not sign the promissory note as guardian. Ss. 28 and 30 of the Negotiable Instruments Act do not cover all cases of representative and cannot therefore be applied to guardians. (*Seshagiri Aiyar and Napier*, JJ.) PADMA KRISHNA CHETTIAR *v.* NAGAMANI AMMAL. **39 Mad. 915= 30 I.C. 574=18 M.L.T. 216.**

———*—Minority and guardianship—Liability of minor.*

A minor is not bound by the execution of the deed by his guardian on his behalf and he can contest the binding nature of the debt. (*Benson and Sundara Iyer*, JJ.) BHOGARAJI *v.* ADAPALLI SESHAYYA. **35 Mad 560= 12 I.C. 123=10 M.L.T. 179.**

———*—Minority and guardianship—Liability of minor—Trade by guardian.*

Where a minor inherits a family business, it is open to his mother as guardian to carry on the business through a manager, if necessary. But the guardian and not the minor is the person personally liable on contracts entered

HINDU LAW—Minority and Guardianship —Liability of minor.

into in the course of the business. The creditors have only an indirect right of recourse against the assets of the business in so far as the guardian himself has a right of indemnity against such assets. If, however, the guardian has no such right and is himself accountable to the minor the creditor's remedies are only against the guardian. It is improper for a guardian of a minor's business to empower an agent to draw bills in favour of himself or his firm and if the guardian suffers loss by the fraud of the agent, he and not the minor nor his assets are liable. (*Wallis and Munro*, JJ.) SANKA KRISHNAMURTHI *v.* BANK OF BURMAH, LTD. **35 Mad 692= (1911) 1 M W.N. 385=14 I C. 389= 21 M.L.J. 620=11 I.C. 79=11 M.L T. 53.**

——— *Minority and guardianship—Liability of minor—Contract by guardian.*

On a contract entered into by a guardian on behalf of a minor in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law of the minor a decree might be passed against the estate of the minor. (*Macnair*, A.J.C.) CHHOGALAL MEGHRAJ *v.* KANHAIYALAL TARACHAND. **56 I C. 740**

——— *Minority and guardianship—Liability of minor—Contract—Want of mutuality.*

A guardian of a minor cannot bind the minor's estate by a contract for the purchase of immoveable property, and as the minor is not bound by such contract there is no mutuality and consequently the minor cannot obtain specific performance of the contract. (*Stanyon*, A.J.C.) SURAJMAL *v.* PANDHARI. **41 I.C. 45=13 N.L.R. 98.**

——— *Minority and guardianship—Liability of minor—Guardian carrying on business on behalf of minor proprietor—Debts of trade—Whether assets liable.*

Where a Hindu family maintains itself by trade, and a minor becomes by inheritance the sole owner of such business, if the trade is carried on thereafter by the guardian the assets of such business will be liable for such debts contracted by the guardian as are necessarily incidental to or flow out of the carrying on of the trade along its normal course. 20 Bom. 767 Foll.; 26 Bom. 206 and 34 Bom. 72, Ref. (*Stanyon*, A.J.C.) JHITIBAI *v.* TEJMAL. **41 I.C. 35=13 N.L R. 109.**

——— *Minority and guardianship—Liability of minor—Personal covenant.*

A guardian cannot bind the estate of the ward except by an agreement clearly purporting to do so and that only in certain cases. A guardian cannot bind his minor ward by an agreement to make the latter personally liable for future maintenance although he can bind the estate if it is subject to a future liability and the covenant be for the benefit of the

HINDU LAW—Minority and Guardianship —Natural guardian.

estate of the minor. (*Miller*, C.J. *and Coutts*, J.) RAJ KUMAR JAGANNATH PRASAD SINGH *v.* MIRZA EKBAL BAHADUR. **5 P.L J 239= 66 I C. 214=1 P L.T. 65.**

——— *Minority and guardianship—Liability of minor—Mortgage by guardian.*

A mortgage of a minor's property by his guardian is binding on the minor only to the extent by which he was benefited. The omission in the document of any reference to the minor does not render the document ineffectual if it is proved that the guardian intended to act only as guardian of the minor. (*Chapman and Jwala Prasad*, JJ.) KALI RAI *v.* KARU SINGH. **3 P.L.W. 210=42 I.C. 462=4 P.L.J. 78.**

Minority and Guardianship—Marriage.

——— *Minority and guardianship—Marriage—Right of mother to select bridegroom for daughter.*

A mother is entitled to select a bridegroom for her daughter and this right of hers should not be interfered with by the Court except in very exceptional circumstances. (*Wallis*, J.) *In the matter of*, MANI BAI. **22 I.C 831= 15 M.L T. 146.**

Minority and Guardianship—Mother.

——— *Minority and guardianship—Mother—Conversion.*

Though an undivorced mother of Hindu infant becomes a Christian, she can still be appointed the guardian of the infants if she be in a position to satisfy the Court that she will be able to carry out the obligation of bringing up her children in the faith of her husband. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMAKAR *v.* MISS BAILEAN. **34 I C. 632=20 C.W.N. 608.**

Minority and Guardianship—Natural Guardian.

——— *Minority and guardianship—Natural guardian—Father—Delegation of functions—Revocation—Interest of minors.*

As in England, so among the Hindus the father is the natural guardian of his children during their minorities, but their guardianship is in the nature of a sacred trust and he cannot therefore during his lifetime substitute another person as guardian in his place. He may in the exercise of his discretion as guardian entrust the custody and education of his children to another, but the authority is revocable and if the interests of the children require it, the father can resume the custody and education of his children in spite of any contract to the contrary. If, however, the authority has been acted upon in such a way as, in the opinion of the Court exercising the jurisdiction of the crown over infants, to create expectations on the part of the minor and it is undesirable in the interests of the minor to revoke the authority, then the Court will place the minor under

HINDU LAW—Minority and Guardianship —Natural guardian.

the custody of the delegated guardian. (*Lord Parker,*) MRS. ANNIE BESANT *v.* NARAYANIAH. **38 Mad. 807=41 I.A. 314= 27 M.L.J. 30=18 C.W.N. 1089= 1 L W 520=(1914) M.W.N 583= 16 M L T. 166=20 C L.J 253= 24 I C. 290=16 Bom. L.R. 625= 12 A.L.J. 1165 (P.C.)**

[On appeal from 25 M.L.J. 661= 15 M L T. 1=(1914) M.W N 1 (Suppl)= 21 I.C. 789 which itself was an appeal from 25 M L J. 560=(1913) M.W.N. 863.

———*Minority and guardianship—Natural guardian—Mother.*

Under the Hindu Law after the father the mother is the preferential guardian of minors and not their brother. A payment by him will not save limitation under S. 21, Lim. Act. (*Mookerjee and Walmsley*, JJ.) BIRESWAR MOOKERJEE *v.* AMBIKA CHARAN BATTACHARJEE. **42 I.C. 472=45 Cal. 630**

———*Minority and guardianship—Natural guardian—Step mother.*

In the absence of nearer relations, a step-mother is under the Hindu Law, entitled to act as the guardian of her step-son. (*Seshagiri Aiyar and Napier*, JJ.) VENKATASAMI NAICKER *v.* MUTHUSAMI PILLAI, **34 M L J 177=46 I C. 949=23 M.L.T. 280.**

———*Minority and guardianship—Natural guardian—Who is.*

Per *Sadasiva Iyer*, J:—Nobody other than the father and mother of a minor with the probable exceptions of the elder brother and the direct male and female ancestors, is entitled to be the natural guardian of the minor. 2 C W. N. 191, Foll; 39 Cal. 232 (P.C.), Ref. The paternal aunt is not a natural guardian. (*Sadasiva Aiyar and Tyabji*, JJ.) THAYAMMAL *v* KUPPANNA KOUNDAN. **38 Mad 1125=26 I.C. 179=27 M.L J. 285.**

———*Minority and guardianship—Natural guardian—Father—Father's right to appoint.*

A Hindu father can appoint a guardian of his child orally or by will to the exclusion of the mother. (*Sundara Aiyar and Spencer*, JJ.) ANANTHANARAYANA IYER *v.* SAVITRI AMMAL. **36 Mad 151=(1912) M.W N. 59= 11 M L T. 63=13 I.C. 458=22 M.L.J. 231.**

———*Minority and guardianship—Natural guardian—Step-mother.*

Under the Hindu Law the step-mother is not the natural guardian of her minor step-son. She is not therefore, a guardian within Art. 44 of the Limitation Act so that Article does not apply to an alienation by her. (*Mittra*, A.J.C.) VITHU v. DEVIDASS. **31 I.C. 943= 15 N.L.R. 55.**

———*Minority and guardianship—Natural guardian—Father—Delegation of right.*

The father as natural guardian, may delegate his authority to others but such delegation is

HINDU LAW—Minority and Guardianship —Right to guardianship.

revocable. Guardianship being a sacred trust, the father cannot substitute another guardian, 38 Mad. 807, Foll. (*Drake-Brockman*, J.C.) HANUMAN SINGH *v.* GANESH PRASAD. **50 I.C. 580.**

———*Minority and guardianship—Natural guardian—Delegation by father—Resumption.*

A Hindu father may in his discretion entrust the custody and education of his children to another but by so doing he does not cease to be the guardian, that being an office which he cannot permanently part with in favour of a third person. (*Lindsay*, J.C.) MUSHAF HUSAIN *v.* MOHAMMAD JAWAD. **21 O.C. 194=48 I.C. 60=5 O L.J. 616.**

———*Minority and guardianship—Natural guardian—Mother.*

Under the Hindu Law the mother is the natural guardian of a minor after the death of the father, irrespective of whether the family be joint or separate. (*Jwala Prasad*, J.) BHAIRS PRASAD SAHU *v.* RAM CHANDRA PRASAD. **45 I.C. 253=4 Pat. L.W. 373.**

———*Minority and guardianship—Natural guardian.*

Father's brother's wife is not a natural guardian. (*Sharfuddin and Roe*, JJ.) SUBA MAHTON *v.* MUNSHI MAHTON. **40 I.C 625.**

Minority and Guardianship— Promissory Note.

———*Minority and guardianship— Promissory note—Liability of minor.*

The executant of a promissory note was described in the body of the note as the guardian of a minor and the necessity for borrowing was stated in the note as arising from the minor's father's debt. *Held*, that the minor was still not liable on the promissory note. (*Oldfield and Sadasiva Iyer*, JJ.) RAMASWAMI MUDALIAR *v.* MUTHUSWAMI IYER. **30 I.C. 481.**

Minority and Guardianship— Right to guardianship.

———*Minority and guardianship—Right to guardianship—Son by first husband.*

The mother continues to be the natural guardian of her infant son, even after her remarriage with second husband, if the infant son lived with her. (*Shah and Crump*, JJ.) RAOJI THAKARAM *v.* PREMRAJ SADARAM. **1923 Bom. 213.**

———*Minority and guardianship—Right to guardianship.*

The guardian of a minor widow is her husband's kin and it is only when the husband's family becomes extinct that the heirs of her own father are entitled to be her guardian. (*Mookerjee and Buckland*, JJ.) SATIS *v.* KALIDASI. **68 I.C. 877=34 C.L.J. 529.**

HINDU LAW—Minority and Guardianship —Right to guardianship.

——*Minority and guardianship—Right to guardianship—Paternal relations.*

On the death of the parent of a child the paternal relations of the minor have no legal right of guardianship of the child. (*Mookerjee and Beachcroft*, JJ.) NIRODE BARANI DEBYA *v.* BHOLANATH SARKAR. **26 I C. 300.**

——*Minority and guardianship—Right to guardianship—Re-marriage—Paternal grandfather—Right to give minor in marriage.*

Under the Hindu Law the mother is, after the father, the natural legal guardian of her minor daughter and she does not lose her right by re-marriage in any case when such re-marriage is recognised as valid by custom. Where the welfare of a female minor is not being neglected by the mother, it is not proper to appoint the paternal grandfather as guardian of the person of the minor and to allow him to remove the girl from the custody of the mother. A Hindu mother can effect a valid marriage for her daughter even in the presence of the paternal grandfather. (*Dundas*, J.) MUSSAMMAT INDI *v.* GHANIA.

58 I.C. 783

——*Minority and guardianship—Right to guardianship—Minor widow.*

The guardians of a minor widow are the husband's relations within the decree of a Sapinda, in preference, to her father and his relations. (*Johnstone*, C J. *and Rattigan*, J.) EMPEROR *v.* TEK CHAND.

27 P.R Cr. 1915=16 Cr. L.J. 780= 31 I.C 380=43 P.W R. Cr. 1915.

——*Minority and guardianship—Right to guardianship—Conversion—Effect.*

A Hindu father does not lose his right to appoint any one as guardian for his child by becoming a Christian. (*Wallis and Abdur Rahim*, JJ.) ALBRECHT *v.* BATHEE JELLAMMA. **11 M L T. 63=(1912) M.W.N. 63= 13 I.C. 453=22 M L.J. 247.**

——*Minority and guardianship—Right to guardianship—Mother.*

The mother is entitled to the guardianship of a minor boy or girl after the father and the paternal kindred is postponed to her. But in respect of property the surviving co-parceners would be entitled to hold possession of the family estate till partition, 4 M H.C.R 339; 3 M.H.C.R. 116, Foll. (*Benson and Sundara Aiyar*, JJ.) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR. **35 Mad 728= 21 M.L J 600=10 M L T 57= 11 I C. 570=(1911) 2 M.W.N 285.**

——*Minority and guardianship—Right to guardianship—Not lost by re-marriage of mother.*

A Hindu widow, who is allowed to re-marry by the custom of her caste, does not, on re-marriage, lose her right of guardianship of her minor son. (*Prideaux*, J.C.) SHAHU *v.* MOHIDIN. **63 I.C. 397=4 N.L J. 80.**

HINDU LAW—Minority and Guardianship —Testamentary guardian.

——*Minority and guardianship—Right to guardianship—Re-marriage.*

A Hindu mother loses her natural right of being a preferential guardian of her minor son's persons by reason of her re-marriage. She may be appointed a guardian as a stranger. (*Mitra*, A.J.C.) CHIRONIJI KASAR *v.* PUNAM CHAND. **48 I C. 75.**

Minority and Guardianship— Testamentary Guardian.

——*Minority and guardianship—Testamentary guardian.*

A Hindu father has, under the Hindu Law, power to appoint by will a guardian of the property of his minor son. (*Mears*, C.J. *and Sulaiman*, J.) DUBANAND *v* ANANDMANI. **18 A.L.J. 1127=59 I C, 909= 2 U.P.L.R. All. 431=43 All. 213.**

——*Minority and guardianship — Testamentary guardian—Father's power — Minor sons—Alienation by guardian—Limitation.*

It is competent to a Hindu father to appoint a testamentary guardian for the management of the family properties during the minority of his sons. If the mother of the nephews of the minor sons, acquiesces in the arrangement, it will be good against all. An alienation by such guardian would be binding on the minor sons unless set aside within the period under Art. 44 of the Limitation Act. (*Scott*, C.J. *and Beaman*, J.) MAHABLESHWAR KRISHNAPPA *v.* RAMCHANDRA MANGESH KULKARNI. **38 Bom. 94=21 I.C. 350=15 Bom. L.R. 882.**

——*Minority and guardianship—Testamentary guardian.*

Under Hindu Law a man cannot appoint a guardian of his minor nephew. Any provision in a Will of a Hindu testator appointing a guardian of his nephew does not bind the Courts under S. 7 (3) of the Guardians and Wards Act. (*Chevis*, J.) DHANPAT RAM *v.* PREM SINGH **220 P L.R. 1911= 12 I C. 452=220 P.W.R. 1911.**

——*Minority and guardianship — Testamentary guardian—Hindu father.*

Under the Hindu Law it is open to a father to appoint a testamentary guardian for his minor son. 41 M. 561 Referred to. Whatever doubts may exist as regards the power of the father to appoint a testamentary guardian for his minor son as regards ancestral property, it is open to him to appoint such a guardian as regards his separate or self acquired property. A bequest by a Hindu father of his separate property to his minor daughter coupled with the appointment of a testamentary guardian for the minor's property would be valid. (*Oldfield and Devadoss*, JJ.) KONTHALATHAMMAL *v* SOUNDARATHACHI.

46 Mad. 873=45 M.L.J. 481=18 L W.256= (1923) M.W.N 902=74 I.C. 896= 33 M.L.T. (H.C.) 80.

HINDU LAW—Minority and Guardianship—Testamentary guardian.

——*Minority and guardianship—Testamentary guardian—Father's power to appoint.*

Per *Sadasiva Iyer*, J.—A Hindu cannot by will appoint a guardian to the ancestral property of his minor sons who take such property by surviorship and not by succession. 30 M.L.J. 504; 21 I.C. 848; 29 I.C. 475, Foll; 7 W.R. 71; 13 M.I.A. 209, Dist.; 38 Bom. 94, Dist. An executor cannot be appointed as guardian for purposes of binding his estate. *Spencer*, J. *Semble.*—There may be exceptional cases in which a Hindu father may validly appoint by will a guardian to manage his undivided son's estate during their minority, when there is an adult co-parcener to do so. (*Sadasiva Iyer and Spencer*, JJ.) CHIDAMBARAM PILLAI *v.* VEERAPPA CHETTIAR.

22 M.L.T. 380=6 L.W. 640=(1917) M.W.N. 744=43 I.C. 865.

——*Minority and guardianship—Testamentary guardian.*

It is not competent to the only adult co-parcener of a Mitakshara family consisting of himself and his minor co-parceners, to appoint a testamentary guardian to the co-parcenary properties of the minor co-parceners. 41 M. 561 and other cases followed. Consequently it is not open to a father to appoint a testamentary guardian for the properties in the hands of his minor sons in supersession of the mother. (*Kotwal*, A.J.C.) JIWANDAS *v.* RAJRANI.

64 I.C. 433.

Mitakshara.

See HINDU LAW—TEXTS.

Mortgage.

See HINDU LAW—ALIENATION.

Mutt.

See HINDU LAW—(1) RELIGIOUS OFFICE.
(2) RELIGIOUS AND CHARITABLE ENDOWMENTS.

Nattu Kottai Chetties.

See HINDU LAW—APPLICABILITY.

Obstructed Heritage.

See HINDU LAW—INHERITANCE.

Partible Property.

See HINDU LAW—PARTITION.

Partition.

ACCOUNTS.
AGREEMENT.
ALIENATION.
AWARD.
BURDEN OF PROOF.
CO-WIDOWS.
DAUGHTER.
DECLARATION OF INTENTION.
DIVISION IN STATUS.
EFFECT OF.
EQUITIES.

HINDU LAW—Partition—Accounts.

EVIDENCE OF.
FATHER.
FEMALE SHARER.
ILLEGITIMATE SON.
INSTITUTION OF SUIT.
MINOR.
ONUS OF PROOF.
ORAL.
PARTIAL PARTITION.
PROVISION.
RE-OPENING OF.
RE-UNION.
RIGHT TO.
SHARES.
SUBJECT-MATTER.
SUIT FOR.

Partition—Accounts.

———*Partition — Accounts — Marriage expenses incurred after suit but before actual partition.*

Under the Hindu Law, the manager of a joint family is not obliged to keep accounts while the family remains joint. When a partition is asked for, partition takes place of the property as it exists in the hands of the manager. From the date of the suit there is a severance of interest and for purposes of succession the family members are no longer considered joint; but it does not follow that thereafter until the joint family property is actually divided it does not remain joint. If pending such division there are many expenses which should be properly incurred by the joint family purse, (*e.g.*, marriage expenses) those expenses are taken out of the family property, and they cannot be debited to any particular co-parcener. (*Macleod*, C.J. *and Heaton*, J.) RAMNATH *v.* GOTURAM. **54 I.C. 118=21 Bom. L.R. 1179.**

——*Partition — Accounts — Liability of manager.*

The manager cannot be called on to defend past transactions. The account which has to be taken is merely an enquiry into existing assets. This general rule, however, has one exception *viz.*, in the case of minors for they cannot be deemed to acquiesce in the management of the estate. (*Beaman*, J.) HARI DAS LALJI *v.* NAROTAM RAGHAVJI. **14 I.C. 769=14 Bom. L.R. 237.**

——*Partition—Accounts—Manager's duty to account.*

The only account that the *karta* is liable to submit in a suit for partition is as to the existing state of the property divisible. The parties have no right to look back and claim relief against past in equalities of enjoyments of members or other matters. (*Mookerjee and Panton*, JJ.) NIBARAN *v.* NIRUPAMA.

26 C.W.N. 570=69 I.C. 476=34 C.L.J. 563.

——*Partition — Accounts — Liability of manager.*

The manager is liable to account only according to the existing state of the family. But

HINDU LAW—Partition—Accounts.

the statement of the manager as to the properties existing is not conclusive and the other members can show assets other than those admitted. (*Fletcher and Richardson*, JJ.) PORMESHWAR DUBEY *v.* GOBIND DUBEY.

43 Cal. 459=33 I.C. 190=20 C.W.N. 25.

———*Partition — Accounts — Purchase of property.*

In a partition suit the Court will not, except in special circumstances, Order an account to be taken of past transactions. Where it is impossible to predicate how much will ultimately be realized out of the outstanding debts, it is sufficient to give the plaintiff a declaration that he is entitled to his proportionate share of whatever may be recovered. Any property acquired by a member with his own money after the passing of the preliminary decree for partition would not be liable to partition, but when, it is shown that he possessed ancestral funds from which such property could be acquired, it lies on him to show that those funds were not employed for the purpose. If he fails to discharge this burden, it must be presumed, that the property was acquired with money belonging to the joint family and it is therefore, liable to partition. (*Broadway and Brasher*, JJ.) LACHHMAN DAS *v.* NANAK CHAND.

23 P.W.R. 1923=1923 Lah. 20.

———*Partition—Accounts — Manager's liability to account.*

Where an account has to be taken with a view to make a partition of joint family properties, the account is merely an enquiry into the existing assets and the head of the family cannot in general be called upon to defend the propriety of his past transactions except in cases of fraud, misappropriation or gross reckless waste. The manager being the accounting party has to file an account as to the properties available for partition but the other members are not bound to accept it. The enquiry directed by the Court should be conducted in the usual manner to find out what the property consists of. The manager should be directed to file his accounts and the other members given opportunity to verify the same. The mere fact that account books were not kept would not in the absence of evidence to show that the accounts produced are false in any particular render him liable. (*Spencer, and Kumaraswami Sastry*, JJ.) TADA BULLI TAMMIREDDI *v* TADA BULLI GANGIREDDI.

45 Mad. 281=42 M.L.J. 670=30 M.L.T. 323 (H.C.)=16 L.W. 55=1922 Mad. 236 (2).

———*Partition — Accounts — Set-off—Deb due to one member.*

When taking accounts in a partition suit, a time-barred claim by one co-parcener against the joint family, cannot be allowed as equitable set-off. (*Spencer and Ramesam*, JJ.) SUBRAYA BHANDARY *v.* JANARDANA BHANDARY.

41 M.L.J. 370=62 I.C. 852=14 L.W. 334.

HINDU LAW—Partition—Agreement.

———*Partition—Accounts, method of taking —Custom among Vaisyas.*

The account to be taken in a partition suit is an account of the assets and liabilities of the family on the date of the plaint. Jewels given to the wives of co-parceners cannot be made available for partition. There is no custom among *Vaisyas* whereby the value of the jewels is to be debited against the husband's share. (*Wallis*, C.J. *Hughes*, J.) LINGAMALLU VARADA RAGHAVIAH *v.* LINGAMALLU VENKATARAMANIAH. **61 I.C. 772=13 L.W. 262.**

———*Partition— Accounts— Partnership consisting of some of the members of the joint family—Suit by or against family for debt due.*

Where an action for the recovery of sums advanced by a partnership consisting of some of the members of a joint Hindu family against the family is barred, the claim cannot be enforced in an action for partition after it has become barred either by way of equitable set-off or as an item in the partnership accounts with the family. (*Sadasiva Aiyar and Phillips*, JJ.) VELLAYAPPA MOOTHAN *v.* KRISHNA MOOTHAN. **44 I.C. 428=34 M.L.J. 32.**

———*Partition—Accounts—Mesne profits—Infant member.*

A minor member living separately of his own accord and not because of the manager is not entitled to mesne profits at the partition of the property. (*Sundara Iyer and Sadasiva Iyer*, JJ.) SRINIVASA IYENGAR *v* THIRUVENKADATHA IYENGAR. **38 Mad. 556=28 M.L.J. 641=(1914) M.W.N. 282=(1913) M.W.N. 1034=23 I.C. 264=15 M.L.T. 307.**

———*Partition— Accounts— Liability of manager—Division in status.*

There may be a division in status as distinguished from a division of property. The former is a matter of individual decision while the latter is the resultant from that division. A separation of one branch of the family does not necessarily put an end to the joint management of the estate by the manager. In an ordinary partition suit where there is no previous separation the enquiry is in the absence of fraud or other improper conduct directed to ascertain the divisible assets, the manager not being liable to account for his past dealings with the family property. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SURAJ NARAYAN *v.* IQBAL NARAYAN. **48 I.C. 543=5 O.L.J. 676.**

Partition—Agreement.

———*Partition—Agreement against.*

Any member of the joint family after its disintegration cannot bring a suit for separate possession of the joint property if he joined the others to refer their matters to arbitration and an award is made thereon precluding themselves during their lifetime from claiming separate possession of it by means of a partition by metes and bounds as the award is binding

HINDU LAW—Partition—Agreement.

on them. (*Knox*, A.C.J. *and Piggott*, J.) RUP SINGH *v.* BHABATHI SINGH. **42 All. 30 = 58 I.C. 632 = 17 A.L.J. 916**

———*Partition—Agreement against.*

The fact that the tenants-in-common of the village are jointly responsible to the Government for the land revenue will not make the village impartible. Nor can the compromise among the parties that the lands should not be divided, impart the character of impartibility to the estate. Impartibility arises out of some special enure or some general family or local custom. Parties cannot render an estate impartible which is partible. (*Chandavarkar and Hayward*, JJ.) PRIOJSHAH BHIKAJI VANDRIVALLAH *v.* MANIBHAI NICHHABAI **36 Bom. 53 = 12 I C. 513 = 13 Bom. L R. 963.**

———*Partition—Agreement against.*

Agreement not to partition is binding on the parties thereto provided no equitable ground is made out for not giving effect to the agreement. (*Chatterjee and Richardson*, JJ.) CHAITA DASSY *v.* MADAN CHANDRA DAS. **33 I C. 33.**

———*Partition — Agreement against — Devolution of share of childless sharer on his brother—Validity of.*

A clause in a partition deed that in the event of the death of any one of them without male issue his share after dedicating alienations by him should be divided among the survivors is valid and does not contravene the provisions of S. 6 of T.P. Act, or Hindu Law. 39 All 414, Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) MUTHU RAMAN CHITTIAR *v* PONNUSWAMY UDYAR. **29 M.L.J 214 = 18 M.L.T 124 = (1915) M.W.N. 405 = 29 I.C. 549 = 2 L.W. 533.**

Partition—Alienation.

———*Partition—Alienation of share.*

If the members of Hindu co-parcenary, deal with their shares with the concurrence of the others, the family should be deemed to have separated. (*Chitty and Teunon*, JJ.) SAKHI LAL CHOWDHURY *v.* WAJID ALI, **50 I.C. 91 = 29 C.L.J. 207.**

———*Partition — Alienation of share—Release for consideration.*

A release for consideration by co-parcener effects a severance as between him and the other members of the joint family. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITHAJI *v.* KOTTAPALLI RAMA CHARLU, **51 I C. 146 = 10 L W. 498.**

———*Partition — Alienation of share—Unilateral declaration—Effect of.*

Where a member of the joint Hindu family transferred his share in the family property to another member for consideration the transaction amounts to a renunciation of the transferer's share for a consideration and does not

HINDU LAW - Partition—Alienation.

effect a partition among all the members of the joint family. 5 Mad. 196; 15 All. 339, Ref.; 11 Mad. 304, Dist. An alienation by a co-parcener is not an unilateral declaration of intention to effect a partition in the family. (*Ayling and Seshagiri Aiyar*, JJ.) KAVERAMMA *v* VISHNU KUNKRILAYYA, **49 I.C. 263.**

———*Partition — Alienation of share—Alienee from co-parcener—Mesne profits.*

Where the family has become divided in status an alienee from a co-parcener who has not been in enjoyment of his share is entitled to his share of the profits from the date of the purchase, in a suit for partition. But when the family has not become divided before alienation, profits can be claimed only from the date to the decree 39 Mad 265; 31 M.L.J. 275; 14 Cal. 493; 16 Cal. 397, Dist. (*Spencer and Krishnan*, JJ.) VANJAPURI GOUNDAN *v.* PACHAMUTU GOUNDAN. **7 L. W. 225 = 48 I.C. 62 = 35 M L.J. 609.**

———*Partition—Alienation of share—Effect of.*

Per *Sadasiva Aiyar*, J.—A member of a joint Hindu family who sells away his share in all the co-parcenary property becomes severed from the joint family and the alienee becomes a tenant-in-common with the co-parceners in respect of the share so alienated. (*Wallis*, C.J., *Sadasiva Aiyar and Seshagiri Iyer*, JJ.) SUNDARA RAJAM *v.* ARUNACHELAM CHETTY. **39 Mad 136, 159 = 29 M L J. 793 816 = 2 L W. 1247, 1266 = 18 M L.T 552, 568 = 33 I C 853 = (1916) 1 M.W.N. 31.**

———*Partition—Alienation of share—Decree at the instance of stranger—Effect of.*

A holding belonged to two brothers forming a joint Hindu family. The elder executed a *muchilika* in favour of the plff. acknowledging that the land was *Kambatham*. Plff. instituted a suit under the Rent Recovery Act to compel him to exchange *patta* and *muchilika*, treating him alone as the owner and on his failure an order of ejectment was passed under S. 10 of Rent Recovery Act. No dispossession took place in pursuance of the said order. The judgment-debtor died and the plff. instituted the present suit to recover possession of the holding from his judgment-debtor's son and brother. *Held*, assuming that the plff. acquired by reason of the judgment the share of his judgment-debtor that share could not be awarded to him without a suit for general partition. A decree for joint possession also could not be made as the Court would not in the exercise of its discretion pass a decree for joint possession in favour of an alienee from one of the members of joint Hindu family. Per *Sundara Aiyar*, J.—The decree has not the effect of conveying the interest of the judgment-debtor or in any way affecting the right of survivorship of the other members of the family. 29 All. 215, Dist. Per *Sadasiva Aiyar*, J.—The decree operated to serve the joint tenancy and to convey to the plff. the

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rights of the judgment-debtor. 29 All. 215, Foll. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) NARAYANSWAMI NAIDU *v.* THIRUMULASETTI SUBBAYA.

24 M.L.J. 79=16 I.C. 698=(1913) M.W.N. 96.

———*Partition — Alienation of share—Survivorship or inheritance.*

When a co-parcener alienates his interest in a co-parcenary property, the joint tenancy in respect thereof is thereby put an end to, and the other co-parceners become tenants-in-common. 35 Mad. 47, Ref. *Quære*—In what capacity does a co-parcener, who alienate his interest in part of the co-parcenary property take the share of another co-parcener who dies subsequent to the alienation whether by a survivorship or inheritance. 20 Mad. 690, 717, Ref. (*Benson and Miller*, JJ.) SRINIVASA SUNDARA THATHACHARIAR *v.* KRISHNASWAMY IYENGAR **11 M.L.T. 312=15 I.C. 384=(1912) M.W.N. 379.**

[This is no longer law. See 25 I.C. 585=39 Mad. 265 (F.B.) also 31 M.L.J. 275 (F.B.]).

Partition—Award.

———*—Partition — Award — Conditions annexed to devolution of property allotted to each sharer.*

Where certain arbitrators are appointed to make a revision of all the moveable and immoveable property among certain brothers it is open to the arbitrators to allot a definite share of the estate to each of the referring parties and is also open to them to make the allotment subject to conditions which affect its tenure or devolution. Where the arbitrators annexed a condition to their award that property allotted to respective co-parceners is to be theirs but if any of them die without male issue, that person's share was to go to the other co-parceners *held* that the insertion of the conditions was valid and did not vitiate the award. The arbitrators did not alter the course of legal devolution in a mode at variance with the ordinary principles of Hindu Law, for according to Hindu Law the co-parceners could have validly agreed amongst themselves to exclude the widows from succession as the arbitrators han done. 29 M.L.J. 214, Ref. to. (*Kotwal*, A.J.C.) MT. PHULA *v.* KUSAM SINGH. **1923 Nag. 70.**

Partition—Burden of Proof.

——*Partition—Burden of proof.*

There is no presumption, when one co-parcener separates from the others, that the latter remain united. (*Lord Buckmaster*) MT. JATTI *v.* BANWARI LAL. **18 L W 273=45 M L J. 356=(1923 M.W.N. 637=25 Bom. L.R. 1256=4 Lah 350=50 I.A. 192=21 A L J 582=L.R. 4 (P.C.) 136=1923 P.C. 136.**

——*Partition—Burden of proof.*

The burden of proof, where a Hindu family is joint and a nucleus of joint family property

HINDU LAW—Partition—Burden of proof.

exists, is on the party setting up a case of separate estate. (*Jenkins*, C.J. *and Mookerjee*, J.) GANPAT MARWARI *v.* BAL MUKUND. **22 I.C. 27=18 C.L.J. 548.**

——*Partition—Burden of proof.*

Where one co-parcener separates from others there is no presumption that the rest remain united. (*Scott-Smith and Leslie Jones*, JJ.) NILKANTH *v.* JAI GOPAL. **60 I.C. 690.**

——*Partition—Burden of proof—Shifting of.*

A Hindu family is presumed to be joint till the contrary is proved. But where the father is actually found to have been selling properties to his son himself, the inference is clear that some sort of partition must previously have taken place. Then the burden of proof as to jointness is shifted to the party alleging jointness. (*Rattigan and Scott-Smith*, JJ.) SUKH DIAL *v.* MANI RAM. **29 P.R. 1915=27 I.C. 489=29 P.L.R. 1916.**

——*Partition—Burden of proof.*

The presumption is that a Hindu family is joint but there is no presumption of separation taking place before or after a particular year. Onus as to time of separation lies on the person setting it up. (*Reid*, C.J. *and Beadon*, J.) MUSSAMAT RUKHMAN *v.* MUSSAMAT KIRPA DEVI. **338 P.L.R. 1913=22 I.C. 184=209 P.W.R. 1913.**

——*Partition—Burden of proof—Partial partition.*

Where it is once admitted by the plaintiffs that there had been a partition before the date of their suit for partition the burden of proof lies upon them to prove that the properties in suit were joint family property and were undivided at the partition, that is, continued to be kept joint, till the date of suit the presumption being, that all property that belonged to the joint family was divided at the partition. Whether the property in suit was joint at the date of the partition and continued to be joint thereafter depends upon the questions, when was the property acquired and when did the partition take place. (*Kotwal*, A.J.C.) ANAND RAO *v.* DADA. **71 I.C. 43.**

———*Partition—Burden of proof—Separation of members on a particular occasion.*

To establish separation of members of a joint Hindu family, it need not be proved that the members separated on a particular occasion. It is sufficient if it proved that they have separated. (*Hallifax and Prideaux*, A.J. Cs.) MURLIDAR *v.* HARIDAS. **62 I.C. 246.**

———*—Partition—Burden of proof—Presumption.*

There is no presumption as to time of partition though partition is admitted. (*Kanhaiya Lal and Kendall*, A.J.Cs.) TIKA *v.* MAHABIR PRASAD. **36 I.C. 629=19 O.C. 92.**

HINDU LAW—Partition—Burden of proof.

———*Partition—Burden of proof—Allowance out of joint funds given by sons to mother, effect of—Lease executed by all members and not by managing member alone—Effect of.*

The burden of proving alleged partition lies upon him who alleges separation. The mere fact that sons in a joint Hindu family gave their mother a small separated allowance out of the joint family funds for her private use especially to be expended on religious purposes, does not show separation of the family; nor does the fact that a lease is executed by all the family members, and not by the managing member alone, establish such separation. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SURAJ BAKSH *v.* SUKHDEI. **32 I C. 291=2 O.L.J. 502.**

———*Partition—Burden of proof—Date.*

Once a disruption is proved to have taken place there is no presumption as to the date of the disruption. (*Kanhaiya Lal*, A.J.C.) MUSSAMMAT MENDANA *v* JAGANATH BAKHSH. **17 O.C. 235=25 I.C, 689**

———*Partition—Burden of proof.*

The onus of proving an alleged separation as well as the date thereof lies on those alleging separation. To constitute a partition, there must be some evidence, that the parties agreed to separate and held their shares, as tenants-in-common and not as joint tenants. (*Lindsay*, J.C.) KANDHAIYYA BUKH SINGH *v* SBEO BUKH SINGH. **20 I.C. 861.**

———*Partition—Burden of proof.*

In the case of a Hindu Mitakshara family, there is no doubt a presumption of jointness and anyone who pleads disruption must prove it. Failure to prove when exactly disruption took place, does not conclusively show that no partition took place at all. The circumstances under which separation may be deduced are all set out in Trevelyan on Hindu Law, p. 349. *Held* on the facts, absence of commensality, separate transactions, separate entry of shares in revenue records and other similar circumstances, clearly indicate separation in status. (*Coutts and Ross*, JJ.) TARA PRASAD JHA BALISEY *v.* MAYA DEBYA. **1922 Pat. 91=4 U.P.L.R. (Pat.) 18=1922 P. 30**

——*Partition—Burden of proof—Separation prior to the date of suit.*

If one party admits separation prior to the date of suit, the burden of establishing that the separation did take place before the date of that transaction lies on him. (*Das*, J.) GOBIND PERSHAD *v.* CHATURBHUJ. **60 I C. 482.**

——*Partition—Burden of proof—Division in status.*

In a suit for partition by a member of joint family, the initial burden is on the defendant to prove a prior separation. (*Roe and Coutts*, JJ.) NARSING MISSER *v.* BIRJU MISSER **48 I.C. 755.**

HINDU LAW—Partition—Co-widows.

——*Partition—Burden of proof.*

The presumption is that ancestral joint estate continues joint and he who alleges division must prove it. 11 M.I.A. 369, Foll. (*Leggatt*, A.J.C.) GOKEL DAS *v.* CHANDI BAI. **10 I.C. 967=4 S.L.R. 225.**

Partition—Co-widows.

——*Partition—Co-widows—Daughters.*

Arrangement between joint limited owners such as widows or daughters for separate possession will subsist only during their joint lives. A title conferred on a third party by such arrangement will terminate with the life of the surviving limited owner. It is binding, however, on the contracting parties. (*Richards*, C. J. *and Rafique*, J.) BALDEO PRASAD *v.* BHAGAVANTI. **33 I.C. 259.**

——*Partition—Co-widows.*

A Hindu co-widow is entitled to have her husband's property partitioned. 1 Mad. 290 (P.C.); 9 W.R. (P.C.) 23, Ref. to. (*Richards*, C.J. *and Banerjee*, J.) CHITTAR KAUR *v.* GOURA KUAR. **34 All. 189=13 I C. 820=9 A L.J. 105.**

———*Partition — Co-widows — Right of alienee from co-widow.*

A decree from co-widow can obtain a decree for partition which will have effect during the lives of the widows. 7 All. 114; 11 M.I.A. 487; 1 Mad. 290; 21 All 51; 23 Mad. 564, Ref. (*Stanley*, C.J. *and Griffin*, J.) DURGA DUTT *v.* GITA. **33 All. 443=9 I.C. 498=8 A.L J. 220.**

——*Partition—Co-widows—Death of one—Survivorship.*

If two widows or two daughters taking jointly the estate of their husband or father make an arrangement for separate possession and enjoyment, the arrangement will not ordinarily deprive the survivor of the right to the whole estate or enable the ladies to confer a title on a third party which will not terminate at the latest with the life of that survivor. There can be no relinquishment by a Hindu female heiress of anything less than the entire interest. (*Richardson and Walmsley*, JJ.) SHYAMADAS ROY CHOWDHURY *v* RADHIKA PRASAD CHATTERJEE. **22 C W.N 846=47 I.C. 853=29 C.L J. 24.**

——*Partition—Co-widows— Survivorship.*

Two Hindu co-widows may make a partition of their husband's estate so as to deprive either of them of the right to succeed by the survivorship to the property allotted to the other. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SUDALAI AMMAL *v* GOMATI AMMAL. **23 M.L.J 355=(1912) M.W N 908=16 I.C. 428=12 M.L.T. 238.**

HINDU LAW—Partition—Co-widows.

———*Partition—Co-widows.*

Two co-widows are entitled to partition their husbands' estate and one co widow can alienate for her life her share whether before or after partition, though the alienation will be binding on the other so as to defeat her right of survivorship if the other consented to it. 7 C.P.L.R. 153, Dist. (*Drake Brockman*, J.C. *and Prideaux*, O.A.J.C.) GOVIND *v.* CHANDRA BHAGA. **34 I.C. 675=12 N.L.R. 100.**

———*Partition—Co-widows—Duty of Court to safeguard interest of reversioner—Debts due to husband.*

Where the reversioner is a party to a suit for partition between co-widows he is entitled to ask the Court to safeguard his interest against possible acts of waste by the widow, provided he can show reasonable grounds for apprehending the same. 31 Cal. 214, Ref. The principal of debts due to the husband and inherited by the widow is part of the corpus of the estate over which the widow's power of disposal is not unlimited. (*Piggott and Rafique*, A.J.Cs.) KAILASHA *v.* BITTO. **16 I.C. 471= 15 O.C. 223.**

Partition—Daughter.

———*Partition—Daughters.*

Daughters have a right to partition their life-interest on the father's property. A status of division will be effected thereby. Such partition will not affect the status of reversioners or their right of survivorship on the death of the other. (*Sundara Iyer and Sadasiva Iyer*, JJ.) KADUNGOTH PURAKKAL AMMALU *v.* KADUNGOTH PURAKKAL MEENAKSHI. **16 I.C. 433=12 M.L.T. 301.**

———*Partition—Daughters—Agreement.*

Limited owners inheriting property jointly may by agreement effect a partition of the property inherited so as to defeat the right of survivorship between them. (*Stanyon*, A.J.C.) BALU BAI *v.* TANU BAI. **24 I.C. 808= 10 N.L.R. 31.**

Partition—Declaration of intention.

———*Partition—Declaration of intention—Agreement to an arbitrator to effect a partition—Effect of.*

It is settled law in the case of a joint Hindu family governed by the Mitakshara law, that a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately even though no actual division takes place; and the commencement of a suit for partition is sufficient to effect a severance in interest even before decree. 11 M. I. A. 75; 5 I. A. 228; 43 C. 1031; 39 A. 496, Foll. An agreement among all the joint holders to constitute a particular person to partition the joint property coupled with an undertaking to accept whatever partition he might make, is

HINDU LAW—Partition—Declaration of intention.

quite sufficient to effect a severance in interest and to put an end to survivorship on the death of one of them. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH. **31 M.L.T. (P.C.) 46= 16 L.W. 223=5 N.L.J. 209= 18 N.L.R. 127=21 A.L.J. 57= 25 Bom. L.R. 1=49 I.A. 358= 1922 P.C. 353 (P.C.).**

———*Partition—Declaration of intention—Service of notice by a co-parcener.*

According to Mitakshara an unambiguous and definite intimation of intention on the part of one member of the family to separate himself and to enjoy his share in severalty creates a division of the interest which until then, was held in jointness. This intention may be intimated by the sending of notice. (*Mr. Ameer Ali*). RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. **45 Mad. 489= 43 M.L.J. 428=(1922) M.W.N. 399= 26 C.W.N. 929=16 L.W. 639= 30 M.L.T. 258=20 A.L.J. 839= 24 Bom. L.R. 1209=49 I.A. 168= 1922 P.C. 201 (P.C.).**

———*Partition—Declaration of intention—Onus on person asserting.*

A disruption of the status of jointness of a Hindu family may take place by agreement without the division of the estate by metes and bounds. Even an unambiguous expression of an intention by one member of the family to separate and hold his share separately is sufficient. But the question is one of fact and the onus is on the party alleging separation of interest or the intention to separate to establish it affirmatively. (*Mr. Ameer Ali*). GIRDHAR DAS *v.* SRI KRISHNA DUTT. **18 A.L.J. 345= 39 M.L.J. 18=29 M.L.T. 71= 23 Bom. L.R. 1348=56 I.C. 293= 12 L.W. 759 (P.C.).**

———*Partition—Declaration of intention—Unilateral declaration by member—Acceptance of less than his share—Effect.*

The unequivocal and unmistakable manifestation by a member of joint Hindu family by his words or conduct of a fixed or determined intention to become separate is sufficient to effect the separation of his title and the severance of his interest although division of possession or partition by metes and bounds has not taken place, or though there be no separation in food and dwelling. A separating member of such family may of his own free-will accept as his share as small a portion of the joint property as seems good to him, and renounce all claims to the rest. *Held*, on the evidence that the appellant had separated in interest and title before the acquisition of the property in suit and that it was therefore his self-acquired property. (*Lord Atkinson*) AMRIT RAO *v.* MUKUND RAO. **53 I.C. 866= 15 N.L.R. 165 (P.C.)**

HINDU LAW — Partition—Declaration of intention.

———*Partition—Declaration of intention—Filing of suit—Severance in status—Intimation.*

In Hindu Law "partition" does not mean simply division into specific shares, it covers both division of title and division of property. It is not the law that an agreement between all the co-parceners is essential to the disruption of the joint status or that the severance of the rights can only be brought about by the actual division and distribution of the property held jointly. "Separation" in the sense of the severance of the status of jointness is a matter of individual volition. 35 All. 80, Foll.; 8 W.R. (P.C.) 1, Expl. Once an individual co-parcener has unequivocally expressed and clearly intimated to his co-sharers his decision to sever himself from the joint family his right to obtain and possess the share to which he admittedly has a title is unimpeachable. Neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons were well-founded or sufficient. There is an immediate severance of the joint status and the Court has simply to give effect to his right to have his share allocated separately from the others. The intention to separate may be evinced in different ways, either by explicit declaration or by conduct. If it is an inference derivable from conduct, it will be for the Court to determine whether it was unequivocal and explicit. 8 W.R. (P.C.) 1, Expl. 4 Cal. 434; 18 Cal. 157, Ref.; 8 W.R. 82, Appr. If, therefore, a member of a joint family intimates to his co-parceners his desire to become divided and institutes a suit for partition, but dies before the preliminary decree, his widow is entitled to inherit his share in the joint property and to continue the suit as his legal representative. 40 I A. 40; 11 M I.A. 71, 76; 17 I.A 194 and 10 W.R. 273. Ref. (*Mr. Ameer Ali*) GIRJA BAI *v.* SADASIVA DHUNDIRAJ

43 Cal. 1031 = 43 I.A. 151 = 20 C.W.N 1085 = 14 A L.J. 822 = 20 M L T. 78 = 12 N.L.R. 113 = (1916) 2 M.W N. 65 = 18 Bom L.R. 621 = 4 L.W. 114 = 24 C L.J. 207 = 37 I C. 821 = 31 M L J 455 (P.C.).

———*Partition—Declaration of intention—Separation from commensality and joint worship—Unilateral declaration.*

Separation from commensality and joint worship which may be due to various causes does not necessarily effect a division of the joint undivided estate. What may amount to a separation or what conduct on the part of the members may lead to a disruption of the joint undivided family and convert a joint tenancy into a tenancy-in-common must depend on the facts of each case. A definite and unambiguous declaration by one member of a joint Hindu family of his intention to separate himself and enjoy his share in severalty amounts to separation, if it is unequivocally and clearly expressed. Where it was shown that separation from commensality and joint worship between two brothers arose from a difference in their religious opinions and there was evidence of conduct inconsistent with partition or exclusion from enjoyment, *held*, that severance was not proved. (*Mr. Ameer Ali*) SURAJ NARAIN *v* IQBAL NARAIN.

35 All. 80 = 40 I A. 40 = 13 M L.T. 194 = 17 C.W.N 333 = 11 A L.J 172 = (1913) M W N 183 = 17 C.L.J 288 = 24 M.L J. 345 = 15 Bom. L.R. 456 = 18 I.C 30 = 16 O.C 129 (P.C.).

———*Partition—Declaration of intention—Advance of money—Liability of other members.*

Although at the time of the advance of money the subject-matter of dispute, the family had expressed the intention to separate, and in the eyes of the law, they were no longer members of a joint Hindu family, yet if there had been no partition of the joint property, the onus, would be upon the defendants to show that the advance made to their father, was made after the actual division of that property so that they would no longer be liable for such advance. (*Macleod*, C J. *and Kanga*, J.) MOTI CHAND RAOJI RAMCHAND *v.* MANECKCHAND GOJAR. **1922 Bom. 147.**

———*Partition—Declaration of intention—Expression in will—Communication to others.*

In a Mitakshara family a member may exercise his intention without the assent of the other members to go out of the family and to have his share of the property; and if at any rate that intention is communicated to the other members of the family there is a good separation. A member of a joint Hindu family executed a Will which was admitted to probate but his brother claimed his properties by survivorship. *Held*, that the will having been admitted to probate must be taken to be a valid document and that the statement in the will that there had been a separation was a sufficient evidence of intention to separate and to go out of the family. (*Fletcher and Huda*, JJ.) SASHI BHUSAN PANIGNAHI *v* LABANYABATI DEBYA. **43 I C 981.**

———*Partition—Declaration of intention—Execution of a will.*

An unequivocal declaration by a member of the co-parcenary body of his intention to be divided in status is sufficient to effect a severance without an agreement between all the co-parceners being required. 40 I.C, 36; 43 C. 1031; 35 A. 80; 12 N L.R. 165; 45 M L.J. 609, Ref. Where a Hindu co-parcener specifies his share as one-third in his will and thereafter purports to dispose of it, there is a division in status created by the will and the provisions of the will are valid and operative. (*Broadway and Martineau*, JJ.) JUMMA RAM *v.* MUNSAB RAI. **1922 Lah. 473.**

———*Partition—Declaration of intention.*

To constitute a severance in status, a declaration of intention by a member of a joint Hindu

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family must be absolutely unequivocal. 35 All. 81; 24 M.L.J. 345 and 33 M.L.J. 746, Ref. (*Napier and Odgers*, JJ.) KRISHNASWAMI BATTER *v.* SREENIVASA BATTAR.

42 M L J. 124=30 M.L.T. (H.C.) 168= 1922 Mad. 341.

———*Partition—Declaration of intention—Expression of intention to sue for partition in an application for withdrawal of suit—Effect on strangers.*

Where in a suit to set aside a mortgage by his father, plff. applied for amendment of the plaint by inserting a prayer for partition and plaintiff afterwards applied for leave to withdraw the suit with liberty to file a fresh suit for partition which petition was allowed. The conduct of the plaintiff did not constitute such an unambiguous expression of intention as to effect a severance of status between him and his father the first defendant. If a person is a *bona fide* purchaser from the father of a Hindu family for value having no notice of the unilateral declaration by the son of an intention to divide from his father he would be entitled to treat the father as having the power to sell the family property for the antecedent debts of the father and other lawful purposes as to bind the son. (*Sadasiva Aiyar and Spencer*, JJ.) VEMI REDDI *v.* NALLAPA REDDI.

57 I.C. 800=11 L.W. 611.

———*Partition—Declaration of intention—Communication.*

In order that a unilateral declaration of intention may effect the declarant's severance of status from a Hindu joint family, there must be some unequivocal and definite expression of intention on his part to the effect that in future he would regard himself as a separated member and the expression of such intention should be communicated to the other members or to the manager of the family. The mere fact that a member of a joint family asks for partition does not necessarily lead to the inference that he intended a separation of status before partition is effected. 41 Cal. 1031 (P.C.), Foll. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITHJI *v.* KOTHAPALLI RAMA CHARLU.

54 I.C. 146=10 L.W. 498.

———*Partition—Declaration of intention—Demand—Suit.*

A definite demand by a member of the joint family for partition and delivery of his share effects a division in status. The filing of a plaint is also such an indication. 35 All. 80 (P.C.); 39 Mad. 159 (F.B.), Ref. (*Spencer and Krishnan*, JJ.) VANJAPURI GOUNDAN *v.* PACHAMUTHU GOUNDAN. **7 L.W. 225= 45 I.C. 62=35 M.L.J. 609.**

———*Partition—Declaration of intention—Regn. Act, Ss. 17 and 49.*

A unilateral declaration of intention by a member of an undivided family to get divided

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is sufficient to effect a partition. Such a declaration embodied in an instrument in writing prior to the division by metes and bounds does not amount to a 'transaction' within the meaning of S. 49 of the Registration Act and is hence admissible in evidence without registration. 35 All. 80 (P.C.); 43 Cal. 1031 (P.C.), Foll.; 30 M.L.J. 62, Expl. (*Sadasiva Aiyar and Spencer*, JJ.) SIKHAMANI PANDITHAR *v.* AMMANI AMMAL. **40 I.C. 36.**

———*Partition—Declaration of intention.*

A unilateral declaration of intention to separate constitutes partition. The filing of a plaint for partition operates as a severance of the joint status. (*Wallis*, C.J., *Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUNDARARAJAM *v.* ARUNACHALAM CHETTY.

39 Mad. 136, 159=29 M.L.J. 793, 816= 2 L.W. 1247, 1266=18 M.L.T. 552, 568= 33 I.C. 858=(1916) 1 M.W.N. 31 (F.B.).

———*Partition—Declaration of intention—Separation of one co-parcener.*

If the male members of a joint Hindu family wish to become divided in status they are at liberty to agree to do so and on their so agreeing they become divided in status even though the properties are not actually divided between them by metes and bounds. A definite and unambiguous indication even by one member of his intention to separate himself and enjoy his share in severalty may amount to separation. A definite partition of properties by metes and bounds is not essential to constitute a definite division in status between co-parceners. The presumption when one of several co-parceners becomes divided, is that the others also have become divided in status. (*Sadasiva Iyer and Napier*, JJ.) BALAKRISHNA MUDALIAR *v.* RAJU MUDALIAR.

16 M.L.T. 610=27 I.C. 736= (1915) M.W.N. 17.

———*Partition—Declaration of intention.*

Per *Sankaran Nair*, J.—A member of an undivided Mitakshara family can effect his separation by a declaration of the same to other members. But the declaration must be so clearly made that he should not be able to profess to continue to be member of the joint family. (*Sankaran Nair and Oldfield*, JJ.) POTHI NAICKEN v. NAICKER

(1915) M.W.N. 303=17 M.L.T. 300= 28 I.C. 625=28 M.L.J. 423.

———*Partition—Declaration of intention.*

The presumption of division in status is raised where a member of a joint family separates or shows his intention to separate. Division by metes and bounds is not necessary. (*Wazir Hasan*, A.J.C.) MAHABIR PRASAD *v.* SURAJPAL SINGH. **10 O.L.J. 240= 1923 Oudh 46.**

HINDU LAW — Partition—Declaration of intention.

———*—Partition—Declaration of intention—Effects of severance.*

It is quite settled that unequivocal and manifest declaration of an intention to become divided in estate amounts to a valid separation and a disruption of the joint family. 8 W.R. 82; 35 All. 80; 43 Cal. 1031 F. (*Jwala Prasad and Adami*, JJ.) RAMJATAN RAI *v.* BALIRAM PRASAD. **1923 P. 23.**

Partition—Division in status.

———*—Partition—Division in status—Enjoyment in specified shares—Agreement.*

Where the co-parceners of a joint Hindu family, entered into a written agreement by which they consented to hold the family property in separate defined and specific shares and this agreement was acted upon for a considerable number of years: *Held*, that the family property must be deemed to have been partitioned from the date of the agreement, although there was no actual division by metes and bounds and that from that date the status of the family ceased to be joint. (*Lord Macnaghten*) RAGHUBIR SINGH *v.* MOTI KUNWAR.
35 All. 41 = 13 M.L.T. 162 =
(1913) M.W.N. 127 = 11 A.L.J. 146 =
17 C.W.N. 453 = 17 C.L.J. 306 =
15 Bom. L.R. 426 = 17 I.C. 766 =
25 M.L.J. 28 (P.C.)

———*Partition — Division in status—Profits divided in specific share—Suit by co-parceners for joint possession to the extent of his share.*

Where plff. alleged that after separation of the family certain property remained to be divided by metes and bounds and prayed for joint possession on the ground of exclusion sometime before the suit and where he proves that the profits of the land which were to be divided by metes and bounds used to be distributed according to shares, that plff. was entitled to joint possession to the extent of his share. (*Bannerji, Piggott and Walsh*, JJ.) SHEODAN *v.* BALKARAN. **18 A.L.J. 1033 =**
43 A. 193 = 59 I.C. 116 =
2 U.P.L.R. (All) 392 (F.B.).

———*—Partition—Division in status—Partition of even moveables only effects change in status.*

Where two brothers divided the outstandings and moveables among themselves but left the immoveable property unpartitioned, *held* that the two brothers held the immoveable property after the partition as tenants-in-common and the widow of one could enforce partition thereof as against the other. (*Scott-Smith and Martineau*, JJ.) MT. BHOLA DEVI *v.* MOHKAM CHAND. **48 I.C. 784 =**
121 P.R. 1918.

HINDU LAW — Partition — Division in status.

———*—Partition—Division in status—Court declaring partition.*

On a Hindu, who had four sons, becoming insolvent, the Court ordered partition and directed delivery of the father's share to the Official Assignee. After the order but before actual partition one son died issueless. *Held*, that the Court's order severed the family status, sons on the one hand and father on the other and therefore the share of the deceased does not pass to the father by survivorship. (*Kumaraswami Sastri*, J.) MASILAMANY MUDALI, *In the matter of.* **13 L.W. 332 =**
(1921) M.W.N. 168 = 62 I.C. 376 =
29 M.L.T. 139.

———*—Partition—Division in status—Agreement to divide.*

An agreement between the members of a joint family provided that all the moveable and immoveable properties of the family were to be divided as from the date of the agreement and that from that time forward, separate accounts were to be kept by the co-parceners and the gain or loss subsequent thereto was on no account to be binding on other co-parceners. *Held*, that the agreement effected a division in status, though there was no actual division of properties by metes and bounds. (*Wallis*, C.J. *and Hannay*, J.) UMAYAORAPAGAM *v.* PALANARAYANA **28 I.C. 908.**

———*Partition—Division in status—Deed of partition—Whether required to be registered—Essentials of a deed of partition.*

Per *Sankaran Nair*, J. (*Oldfield*, J. *contra*). A deed of partition need not be registered as no interests are created by it and if any interests are created they are created not by the instrument but by Hindu Law. Per *Oldfield*, J.—An unregistered deed of severance in status can be admitted as an evidence of partition of moveable property, but it cannot be admitted in case of immoveable property, if it is not registered. (*Sankaran Nair and Oldfield*, JJ.) POTHI NICKEN *v.* NAICKAR.
(1915) M.W.N. 303 =
17 M.L.T. 300 = 28 I.C. 625 =
28 M.L.J. 423.

———*—Partition—Division in status—Document effecting.*

Where a deed recites that there is no community of property or interest between the members of a family it is a final decision binding on the parties and those claiming under them. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) MUTTUSWAMI NAICKER *v.* MUTTUSWAMI NAICKER. **27 I.C. 3.**

———*—Partition—Division in status—Right of co parceners—Redemption.*

When a joint family has become divided, the co-parceners become tenants-in-common and

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one co-parcener is entitled to redeem his unascertained share of his property mortgaged by the manager before partition and to see to its ascertainment and his possession thereof. (*White*, C.J. *and Oldfield*, J.) KURUCHA GANGU NAIDU *v.* KOVVURI BASAVA REDDY.
13 M.L.T. 148=18 I.C. 691=(1913) M.W.N. 821.

———*Partition—Division in status.*

Members can have completely divided status though only a certain portion of the property is actually divided. (*Abdur Rahim and Spencer*, JJ.) SEGU CHIDAMBARAMMA *v.* SEGU BALAYYA. **12 I.C. 704=(1911) 2 M.W.N. 467.**

———*Partition—Division in status—Deed—Construction.*

When a deed of partition provided that that property should be divided into three parts one to the eldest and two to the other two, and that any property left undivided into three parts and that in future the parties shall have no relation in respect of property except connection by blood, a severance was effected between the two younger sons though the property was kept together without division. (*Munro and Sankaran Nair*, JJ.) KONNHAMBAL AMMAL *v.* KRISHNASWAMI BHATTAR. **10 I C. 385=(1911) 1 M.W.N. 310.**

———*Partition—Division in status—Widow.*

A Hindu widow who inherits her husband's share in joint property is entitled to obtain partition of the share in her name. 30 All. 400, Foll. (*Kanhaiya Lal*, J. C.) RAGHUBIR SINGH *v.* JANKI KUAR. **52 I C. 11=6 O.L.J. 282.**

———*Partition—Division in status—Agreement to separate—Tenancy-in-common.*

Once the members of a joint Hindu family have agreed and declared their intention to hold the joint family property in definite shares, the family is no longer a joint family. It may be that no actual division of the property takes place, but the result of such agreement and the declaration is that from the time it is made the parties thenceforth hold the property not as joint tenants but as tenants-in-common. (*Lindsay*, J.C. *and Daniels*, A.J.C.) CHAUBAR SINGH *v.* BAKHTAWAR SINGH. **47 I.C. 897=5 O.L.J. 486.**

———*Partition — Division in status — Separation of one member—Effect.*

If once the shares of the family in the property are defined the family ceases to be a joint family in spite of there being no division by metes and bounds. Such definition of shares and such intention of separation may be evidenced by deed or by conduct. In either case it will be the intention that is the determining factor. After the separation of one of the members of a joint family, the presumption of jointness is destroyed and the fact that the rest of the members continued to remain united must be proved by the party who sets up reunion. (*Jwala Prasad and Ross*, JJ.) SADANANDA BARPANDA *v.* BAIKUNTH NATH. **68 I.C. 833=2 P.L.T. 299.**

HINDU LAW—Partition—Effect of.

Partition—Effect of.

———*Partition—Effect of—Infant son.*

The estate had not been partitioned though the decree in favour of an infant son against father for partition had been made. *Held*, the later decree declaring certain alienation by father void cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDAR.
45 M.L.J. 728=33 M.L.T. 182 (P.C.)=18 L.W. 743=1922 P.C. 341 (P.C.).

———*Partition—Effect of—Survivorship put an end to.*

A separation between members of a joint Hindu family followed by a partition between them of the ancestral property which would not put an end to their co-parcenary rights in the property, is unknown to the law. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. **42 Cal 582=1 L.W. 863=41 I.A. 276=18 C.W.N. 1249=27 M.L.J. 373=16 M.L.T. 382=(1914) M.W.N. 807=12 A.L.J. 1217=21 C.L.J. 9=25 I.C. 417=17 Bom. L.R. 18 (P.C.)**

[On Appeal from 3 I.C. 207.]

———*Partition—Effect of—Revocation.*

Where a document makes partition in fact and is acted on by all parties for a long time without any dispute as to their rights under it, the fact that it is called a will would not invalidate the partition. A provision in such deed to the effect that in case of mismanagement or bad character of the sons among whom the property was divided the document would be cancelled is merely a threat and could not at all have been enforced. (*Lord Moulton*). BRIJ RAJ SINGH *v.* SHEODAN SINGH. **35 All. 337=25 M.L.J. 188=17 C.W.N. 949=(1913) M.W.N. 515=11 A.L.J. 698=14 M.L.T. 11=18 C.L.J. 57=15 Bom. L.R. 652=19 I.C. 826=40 I.A. 161.**

———*Partition—Effect of—Assignment of debt due to the family to one of the members—*

HINDU LAW—Partition—Effect of.

Debtor not entitled to question—Death of member pending proceedings.

The death of a member of a joint Hindu family during the pendency of the partition proceedings does not affect the validity of the final partition. Consequently where at the family partition a mortgage debt due to the family is assigned to one or some of the members of the family it is not open to the debtor to raise an objection to the validity of the partition between the members of the creditor's family. (*Rafique and Lindsay*, JJ.) ASLAH KHATUN *v.* BALDEO PRASAD.

20 A.L.J. 957=1923 All. 63.

——*Partition—Effect of—Nature of such suits.*

The object of a suit for a partition is to alter the form of enjoyment of the joint property by the co-owners. Partition signifies the surrender of a portion of a joint right in exchange for a similar right from the co-sharers. The essence of partition is that the property is transferred into estates in severalty and one of such estates is assigned to each of the former occupants for his sole use and as his sole property. There is no anology between the process thus described and the enforcement of a money claim, even though associated with land, as in the case of a *benami* mortgage or of a *benami* lease, though even as regards leases and mortgages there is apparently some divergence of judicial opinion. (*Mookerjee and Newbould*, JJ.) ATRABANNESSA BIBI *v.* TAFATULLAH MIA. **43 Cal. 504=31 I.C. 189=22 C.L.J. 259.**

——*Partition—Effect of sons remaining under custody of Father.*

Where a father has divided some property among all his sons but two of them are kept in custody, on account of their tender age, they do not get a perpetual right by way of inheritance to property retained or subsequently acquired by him. (*Chitty and Chatterjee*, JJ.) HARACHANDAR DAS *v.* RAM CHANDAR DAS. **9 I.C. 834.**

——*Partition—Effect of.*

The very conception of a joint Hindu family involves joint ownership of all family property by the members and the moment a partition takes place even if it is only of a portion of the property, they cease to be members of a joint family. (*Le Rossignol and Martineau*, JJ). BENI PARSHAD *v.* MT. GUR DEVI.

4 Lah. 252=5 Lah. L.J. 185=1923 Lah. 497 (1).

——*Partition—Effect of.*

The agreement of partition converts the family into joint contractors and in the absence of express authority one contractor cannot make an acknowledgment so as to bind the others. (*Ayling and Napier*, JJ.) VUPPALA BAPANNA *v.* PABBISETTI BHEEMALINGAM.

3 L.W. 231=33 I.C. 986=(1916) 1 M.W.N. 162.

Partition—Equities.

——*Partition—Equities—Purchaser from co-parcener—Rights of.*

A purchaser from a co-parcener of a portion of joint family property can bring a suit for partition and on partition the property which he purchased should, if possible, be given to him as his share. (*Macleod*, C.J. *and Shah*, J.) DHULABHAI DABHAI *v.* LALA DHULA.

23 Bom. L.R. 777=1922 Bom. 137.

——*Partition—Equities—Alienee from co-parcener.*

An alienee for value from a co-parcener of family properties cannot sue for joint possession but can sue for partition including all the co-parceners and all the family properties and obtain an allotment, if possible, of the alienated properties to the share of his vendor. (*Heaton and Hayward*, JJ.) PANDU VITHOJI LADKE *v.* GOMA RAMJI MARWADI.

43 Bom. 472=50 I.C. 765=21 Bom. L.R. 213.

——*Partition — Equities — Mortgage of undivided share of a member—Rights of mortgagee.*

Where a member of a joint Hindu family mortgages his undivided share in certain items of property and in a subsequent partition certain items are allotted to the mortgagor, the mortgagee should proceed only against the items which fell to the mortgagor on partition. 1 I.A. 106, Foll. (*Chevis and Le Rossignol*, JJ.) PREM SHAH *v.* KHAN CHAND.

48 P.L.R. 1916=30 I.C. 31=128 P.W.R. 1915.

——*Partition—Equities—Family arrangement—Allotment of property in possession.*

A family arrangemsnt for managing the family property does not amount to partition. A suit for a share in the joint revenue paying land is practically not a suit for land, but for one for joint possession. Where one member without objection by the others spends his personal income on the joint property of which he is in possession lawfully he is entitled to be maintained in its possession at the time of partition if possible and is entitled to get reasonable compensation for the part which he is obliged to give up. (*Robertson and Beadon*, JJ.) THAKAR SINGH *v.* UJAGAR SINGH.

26 P.L.R. 1913=18 I.C. 583=8 P.W.R. 1913.

HINDU LAW—Partition—Equities.

———*Partition—Equities — Joint family—Alienation—Co-parcener—Rights of alienee from—Suit to set aside alienation.*

A purchaser from a member of a joint Hindu family has only an equity as against the other members to work out his interest by a suit for a general partition. In cases where possession of the property is claimed by co-parcener on the ground of the invalidity of the alienation as against him, the Court must decree possession and simply declare the right of the purchaser to a partition. (*Kumaraswami Sastri and Deva Doss*, JJ.) SUBBA GOUNDAN *v.* KRISHNAMACHARI. **43 Mad. 449=42 M.L J. 372=30 M.L.T 217=15 L W, 537=(1922) M W.N. 269=1922 Mad. 112.**

———*Partition—Equities — Alienee from co-parcener—Rights of different properties allotted to alienor.*

Where a Hindu co-parcener sells specific items of the family properties and the alienee in his turn sells away the property to the plff. and subsequently at a partition, items other than those sold by the co-parcener are allotted to him, the second alienee cannot call upon the first alienee to give lands of equal extent. The principle of substituted security has no application to the case. 38 Mad. 684; 43 Mad. 309, Ref. (*Abdur Rahim and Oldfield*, JJ.) DHADA SAHIB *v.* MAHOMED SULTAN SAHIB. **12 L.W. 603=39 M.L.J. 706=(1920) M.W.N. 710=59 I.C. 311=44 M. 167.**

———*Partition—Equities—Alienee from co-parceners—Right to substituted properties.*

Where a person purchases the share of co-parcener in certain items of a joint family property and subsequently at a family partition other items are allowed to the share of that co-parcener it is open to the purchaser to compel that co-parcener to give the properties in substitution of those which had been sold. 1 I.A. 106 (P.C.), Dist.; 38 Mad. 684; 25 Mad. 690; 40 Mad. 365, Rel. The case would be different if the purchase was at an execution sale. (*Seshagiri Aiyar and Moore*, JJ.) SABAPATHI PILLAI *v.* THANDAVARAYA ODAIYAR. **37 M.L.J. 620=51 I.C. 515=11 L.W. 108.**

———*Partition — Equities — Alienee from co-parcener—Mesne profits.*

The Court will always endeavour as far as possible to allot to the purchaser the share he purchased, in a suit for partition. (*Spencer and Krishnan*, JJ.) VANJAPURI GOUNDAN *v.* PACHAMUTHU GOUNDAN. **7 L.W. 225=45 I.C. 62=35 M.L.J. 609.**

———*Partition—Equities—Building erected by one member.*

HINDU LAW—Partition—Evidence of.

Where one of the members of a co-parcenary was shown to be in possession of the house site upon which he has erected a superstructure, the proper decree to be passed is to allow him to retain the house site and direct him to pay its price to the other co-sharer who claims a share in the house site alone. (*Wallis*, C.J. *and Tyabji*, J.) DEVARASU VENKATACHALA DWARAKANADHA; RAO *v.* DEVARASU VENKATARAO. **29 I.C. 183=17 M.L.T. 361.**

———*Partition — Equities — Expenses for marriage of unmarried co-parceners should be set apart at partition.*

As marriage is a necessary *samskara* and should be performed out of family funds the expenses for the marriage of unmarried co-parceners should be set apart at partition of joint family properties. (*Sundara Iyer and Sadasiva Iyer*, JJ.) SRINIVASA IYENGAR *v.* THIRUVENGADA IYENGAR **38 Mad. 556=(1913) M.W.N. 1034=15 M.L.T. 307=(1914) M W.N. 282=23 I C. 264=26 M.L J. 644.**

———*Partition—Equities—Attachment of property—Effect on.*

Where pending an attachment of the defendant's share in several items of property a partition took place and the deft. got one whole item instead of a share in all, *held*, that the order of attachment covered the property actually attached and cannot be enforced against the property received in lieu of the same. (*Piggott*, J.C.) RAM AUTAR *v.* SHEO PRASAD. **20 I.C. 43.**

Partition—Evidence of.

———*Partition—Evidence of—Entry in village and revenue records—Decree of Settlement Officer regarding superior proprietary rights.*

In a joint Hindu family, the presumption is, until the contrary is proved, thas the family continues joint. That presumption is peculiarly strong in the case of the sons of one father. A definition of shares in revenue and village papers affords, by itself, but a very slight indication of an actual separation in a Hindu family and such a definition of shares standing alone is not sufficient evidence, on which to find, contrary to the presumption of law as to jointure, that the family to which such definition is referred had separated. 18 All. 176, Appr. A decree of a Settlement Court in Oudh made in 1869 in favour of the widows of two deceased Hindus for "superior proprietary rights" in property lineally descended to their husbands "the decree being subject to the rights of the other share-holders," does not affirm that a separation had taken place but, on the contrary, preserves all rights inherent in the property as

HINDU LAW—Partiton—Evidence of.

joint family property. 12 I.A. 124, Rel. on. (*Lord Shaw.*) NAGESHAR *v.* GANESHA.

42 All. 368=47 I.A. 57=38 M.L.J. 521=18 A.L.J. 532=22 Bom. L.R. 596=28 M.L.T. 5=7 O.L.J. 48=2 U.P.L.R. (P.C.) 37=36 I.C. 306=23 O.C. 1 (P.C.).

[On appeal from 36 I.C. 780=3 O.L.J. 454.]

———*—Partition — Evidence of—Impartible estate—Separation in estate.*

The holder of an impartible estate of a joint Hindu family, descending by primogeniture, made a *mokurari* grant to his brother for maintenance. The grantee built a separate house divided by a wall from his brother's, established a *thulsi pinda* (worship) and *thakurbari* (office) lived separately from his brother, and defrayed the expenses of the marriage of his daughter from his own pocket. *Held*, on facts, that there had been a complete separation between the brothers and that on the death of the holder of the estate without male issue his widow succeeded to the estate as his heir. (*Sir John Edge.*) TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH.

42 Cal. 1179=42 I.A. 192=19 C.W.N. 1119=29 M.L.J. 371=18 M.L.T. 228=2 L.W. 843=13 A.L.J. 1034=17 Bom. L.R. 1012=22 C.L.J. 498=30 I.C. 833=(1915) M.W.N. 717 (P.C.).

———*Partition—Evidence of—Presumption of jointness—Separate entries in Revenue records—Inferences from the acts of the members of the family.*

Separate entries in the Revenue records standing by themselves were not sufficient to rebut the presumption of Hindu Law relating to jointness or to prove separate possession by different members of a family which in its inception was admittedly joint. Such entries together with the inference drawn from the said facts, which tended to show a separation and were consistent only with the hypothesis of separation, left no doubt that at the time of his death the deceased half brother was separate from his brothers the plaintiffs. (*Mr. Ameer Ali.*) NET RAM SINGH *v.* TURSA KUNWAR.

17 C.W.N. 1085=(1913) M.W.N. 658=14 M.L.T. 173=18 C.L.J. 234=15 Bom. L.R. 363=25 M.L.J. 489=20 I.C. 967=11 A.L.J. 861 (P.C.).

———*Partition—Evidence of—Acquisition of property in the name of several members—Transfer of property* inter se.

It is by no means an unusual thing for members of a joint family when acquiring landed property by purchase to cause to be specified in their documents of title the shares which they would respectively take upon a partition. Where this is not done the ordinary inference from the document on the face of it would be that the vendees are taking in equal shares and the members of the family way will think it convenient that such a presumption where it is not in accordance with the facts, should be rebutted by a specification of shares; no clear inference in favour of separation or the break up of the joint family can be drawn from a transaction of this sort. It is quite conceivable that a deed of transfer might be executed as between members of a joint family merely in order that there might be clear evidence in existence as to their respective rights in the event of any future difference or separation. (*Piggott and Walsh, JJ.*) MT. JAIRAJI *v.* BHAGWAT PRASAD PANDE.

L.R. 3 All. 154=1923 All. 225.

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———*Partition—Evidence of — Separate enjoyment of portion for maintenance.*

Separation in estate and from the joint family does not follow as a necessary consequence from the receipt of a maintenance grant by one of the members of the family. (*Banerjee and Ryves, JJ.*) GANESH LAL *v.* BASANTI LAL.

20 I.C. 29.

——— *Partition—Evidence of.*

Separate enjoyment in shares of the income of the property does not necessarily cause severance of the joint family property. (*Richards, C. J. and Banerjee, J.*) BUDHA-SINGH *v.* KAWALNAIM.

19 I.C. 430.

———*—Partition—Evidence of--Separateness.*

The mere fact that co-parceners are messing separately does not mean that the possession of one co-parcener of joint family property is adverse to the other co-parceners. 33 C. L. J. 344 Rel. (*Greaves and Panton, JJ.*) HEMANGINI DASI *v.* SITAL MONDAL.

1923 Cal. 310 (1).

——*— Partition — Evidence of — Separate possession—Property excluded from partition.*

There is no presumption that certain properties were excluded from partition in a joint family and the burden of proof is on the person who alleges such exclusion. Separate possession of certain properties is not conclusive evidence of partition and must be interpreted in the light or all the other circumstances of the case. (*Mookerjee and Cuming, JJ.*) KAILAS CHANDRA NAG *v.* BIJAY CHANDRA NAG.

36 C.L.J. 434=1923 Cal. 218.

——*—Partition—Evidence of.*

If a property stood in the name of K, one of the four brothers, this is not even *prima facie* evidence that the property was obtained by K, for himself if at the time of acquisition, the family was still joint. There is no presumption with regard to any other property that it was excluded from the partition, and the

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burden lies upon him who alleged exclusion, to establish his assertion. Separate possession is not conclusive evidence of partition and must be interpreted in the light of all the circumstances of the case. The sole occupation by one co-sharer, of a portion of joint property does not constitute an ouster of the other co-sharers; and a co-sharer in possession of a portion of the common land, with the tacit or express consent of his co-sharers, cannot change the nature of that possession. (*Mookerjee and Cuming*, JJ.) KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **36 C L J. 434 = 1923 Cal. 18.**

———*—Partition—Evidence of—Proof—Separate enjoyment—Inference.*

Under the Hindu Law, a partition is effected between members of a joint family if there is a division of their rights; an actual distribution of the property by metes and bounds is not necessary. To determine whether two persons, members of a joint Mitakshara family, have separated so as to make the principle of survivorship no longer applicable between them, the Court must find whether they had an intention to separate, and, whether as a result of such intention, there has been severance of title and interest. To prove a partition there must be evidence of a complete separation in interest, a total disruption of the tie of joint family. A partition may occasionally be established by oral evidence, which though not directly proving the factum of partition, may be of such a character as to justify the inference that a partition must have been made between the parties or their predecessors. There may be a mutual arrangement for the management and enjoyment of separate portions of joint property which does not amount to partition. On the other hand the inference in favour of a theory of a partition would be strengthened if it was proved not only that the parties enjoyed separate and distinct portions of the family property for many years, but dealt with the separate portions in every respect as their own property, for instance, carried out improvements on them or effected alienations to strangers or to members of the family. (*Mookerjee and Beachcroft*, JJ.) ANAND KISHORE CHOWDHURY *v.* DAIJI THAKURIAN. **28 I.C. 580 = 21 C.L.J. 296.**

———*—Partition—Evidence of.*

Where a family continued joint till a very recent date, the person pleading separation must prove it and he cannot plead limitation to a suit by any other member without proof of separation; possession of one is possession of all. (*Tottenham and Norris*, JJ.) PARAMANUND *v.* KRISHNA CHARAN. **12 I C. 6 = 14 C.L.J. 183.**

———*—Partition—Evidence of—Separation in food, worship and residence.*

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From the separation of the members of the family in food, residence and worship it does not follow that the family had divided, for it might well be that in order to manage the family business and property at different places the members had to go to and live in those places separately. When a member of a Hindu family who is divided in status from others is in enjoyment of a portion of the family properties while the others enjoy other portions, he is not in law excluded or ousted from those other portions, so as to disentitle him to his share of those portions, however long their enjoyment by others. (*Broadway, and Zafar Ali*, JJ.) BHAGWAN DAS *v.* MT. PARBATI. **1923 Lah. 569.**

———*—Partition—Evidence of—Admissions in litigation—Effect of.*

A definition of shares in revenue papers is not, standing alone, sufficient evidence of a separation between the members of a Hindu family. But where in addition to the entry in the Revenue records, there is the clear admission of the plaintiffs in a suit to contest an alienation that they and their brothers owned the land in equal shares there is sufficient evidence of partition. 18 A. 176; 42 A. 368 Ref. (*Martineau*, J.) DATA RAM *v.* BADLU. **4 U.P.L.R. (L.) 62 = 1922 Lah. 450.**

———*—Partition—Evidence of—Assignment of property.*

Mere assignment by father of certain property to sons to enable them to start on business does not amount to partition. (*Scott-Smith*, J.) NANAK CHAND *v.* LACHMAN DAS. **82 P.R. 1917 = 40 I.C. 775 = 97 P.W.R. 1917.**

———*—Partition—Evidence of.*

Cesser of commensality does not by itself amount to partition, especially when it is a mere accident brought about by force of circumstances. (*Rattigan, Shah Din and Le Rossignol*, JJ.) GOKAL CHAND *v.* HUKUM CHAND NATHUMAL. **70 and 71 P R. 1917 = 164 P.L.R. 1916 = 34 I.C. 714 = 109 P.W.R. 1916.**

———*—Partition—Evidence of.*

Evidence of alienation by members of portions of family property is enough to show disruption of the joint family. (*Shah Din and Chevis*, JJ.) MATHRA DAS *v.* GOPALDAS. **33 I.C. 526 = 69 P.W.R. 1916.**

———*—Partition—Evidence of—History of family—Money-dealings.*

Mere absence of a formal partition among the members of a Hindu family is not in itself conclusive on the question of the status of the family but the matter has to be decided on an

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examination of the history of the family of mutual dealings and dealings with outsiders and on admissions, if any, of the members of the family. 11 M.I.A. 75, Foll. Money transactions between the members of a Hindu family, the one lending and the other borrowing and showing corresponding debts and credits in their books, are important proof of partition. (*Johnstone and Shadi Lal*, JJ.) MUNSHI RAM *v.* GINDAMAL. **123 P.L.R. 1915 = 26 I.C. 390 = 45 P.W.R. 1915.**

———*Partition—Evidence of—Hostility.*

Mere unfriendliness on the part of a son does not effect a severance. Separate living is not sufficient to prove partition when the parties are maintained out of joint funds. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD., LAHORE. **3 P.R. 1915 = 110 P.W.R. 1914 = 25 I.C. 480 = 215 P.L.R. 1914.**

———*Partition—Evidence of.*

Where it is shown that for many years past the brothers had nothing in common except the ancestral house wherein they lived separately and had remained separate in food, expenditure, income and worship, the presumption of jointness is rebutted. (*Shah Din and Chevis*, JJ.) SHAM LAL *v.* CHHAJJU MAL. **31 P.W.R. 1913 = 19 I.C. 51 = 76 P.L.R. 1913.**

———*Partition—Evidence of.*

Separation in food and worship for 40 years, enjoyment of portions of the properties separately, treatment of them as exclusive property by alienation and other ways shows disruption of the family and separation in interest. (*Johnstone and Shah Din*, JJ.) MEHR SINGH *v.* DEVIDYAL. **38 P.R. 1912 = 32 P.W.R. 1912 = 13 I.C. 50 = 19 P.L.R. 1912.**

———*Partition — Evidence of — Separate living—Separate transaction—Effect of.*

The mere fact that the members of a joint family live separately or have separate dealings or execute documents in favour of each other does not conclusively prove a divided status but may be consistent with an undivided status. Nor does a document between the members of the joint family taking in a stranger as a co-parcener effect a severance between them. (*Krishnan and Ramesam*, JJ.) VENKATACHELA PILLAI *v.* ARUNTHAVATHACHI. **(1923) M.W.N. 225 = 17 L.W. 785 = 1923 Mad. 568.**

———*Partition — Evidence of—Agreement for maintenance—Severance of joint family—Suit for partition by one member against—Other co parceners not parties—Decree for plff.'s share—Severance of other co-parcener's shares*

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—Provision in a partition for a stranger—Invalid.

Where in compromise of an appeal against a partition decree the junior member agreed to receive a monthly maintenance from the manager for the reason that a partition of the Zemindari which would if left intact be a source of protection to the family, will endanger the status of the Zemindari. *Held*, that it was with a view to prevent a division of the Zamindari and to keep it as an impartible estate, that the agreement was come to and that it did not on its true construction effect a severance of the joint family but only provided for a convenient mode of enjoying the joint family properties. 20 Mad. 256 (P.C.) 1, Foll. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) PALANIAMMAL *v.* MUTHU VENKATACHALA. **43 I.C. 833 = 33 M.L.J. 759.**

———*Partition—Evidence of—Unregistered deed.*

Unequivocal declaration contained in a document cannot effect a severance where there was no intention to divide without the deed itself simultaneously taking effect. If the deed is unregistered it is inadmissible to prove a division in status. (*Wallis*, C.J., *Sadasiva Iyer and Seshagiri Iyer*, JJ.) POTHI NAICKEN *v.* NAGANNA NAICKEN. **30 M.L.J. 62 = 19 M.L.T. 50 = (1916) 1 M.W.N. 79 = 32 I.C. 486 = 3 L.W. 115 (F.B.).**

———*Partition — Evidence of — Separate residence.*

Separate residence by several branches of a family in the same compound is no evidence of partition of family nor does discontinuance of allowance to several members raise that presumption. (*Wallis*, C.J. *and Srinivasa Iyengar*, J.) VISVANATHASAMY NAICKER *v.* KAMULU AMMAL. **(1915) M.W.N. 963 = 2 L.W. 1214 = 19 M.L.T. 296 = 31 I.C. 833 = 30 M.L.J. 451.**

———*Partition—Evidence of.*

Where a partition is alleged and has to be proved by oral evidence, and no occasion for such partition is proved, the Court will not find partition unless proved by clear and satisfactory evidence. The onus is on the party relying on the partition. (*Wallis*, C.J. *and Hannay*, J.) PILLADY VENKANNA *v.* PILLADY GANAGAMMA. **28 I.C. 817.**

———*Partition—Evidence of—One member separating from others—Indications showing separation of interest.*

Where subsequent to the separation of one member, the other members take separate meals, acquire property in their own names, make

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separate payments of kists in equal or proportional parts to their shares, all these things certainly point to a separation of interest between the members of the family. The fact that instead of the management of the family income by one member of the family, there is a division of the produce into shares, gives rise to the inference that the parties were separate in interest. (*Miller and Tyabji*, JJ.) GADIAN CHETTIAR *v.* GADIAN CHETTIAR.
26 I.C. 43=1 L.W. 799.

———*Partition — Evidence of—Separate living.*

Seizure of some part of the family property by a member of a joint Hindu family, quarrelling with his family in order to provide himself with a living does not lead to forfeiture of his right to obtain a formal partition in which he would get his proper share. (*Simpson*, A.J.C.) CHAUDHURI JANGI SINGH *v.* CHAUDHARI GANGA SINGH. **10 O. L.J. 393=1924 Oudh 115.**

———*Partition—Evidence of—Severance in interest—Inference from conduct.*

In view of the circumstances that there was a quarrel between the brothers and that the plff. resented the reckless conduct of his step-brother, the separate living between the parties for the last nine years, the application made by the plff. to have his name recorded in the *khewat* in respect of an eight anna share; *held*, that the condition of things was consistent with a tenancy-in-common resulting from an expression of intention to separate in an unambiguous language on the part of either of them. (*Wazir Hassan*, A.J.C.) SHEO DAYAL *v.* LALTA PRASAD. **7 O.L.J. 535=38 I.C. 608=23 O.C. 181.**

———*Partition—Evidence of.*

Entry of the name of a widow of a deceased member of a joint Hindu family disputed without delay cannot be taken as conclusive evidence of the fact that the family had separated even though there was no actual separation. (*Lindsay*, J.C.) SUNDARA DEBIA *v.* SHEO RAM. **48 I.C. 153=3 O L.J. 597.**

———*Partition—Evidence of separate residence—Onus.*

The mere fact that during the absence of a co-parcener his wife owing to the quarrels with the rest of the family resided separately from the other members is not proof of a severance in status. (*Lindsay*, J.C.) GOBINDAY *v.* ADHIN. **44 I.C. 78=20 O.C. 398.**

———*Partition—Evidence of—Entries in revenue papers.*

Entries in revenue papers defining shares, separate residence, institutions of suit

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altogether go to prove division. (*Kanhaiya Lal and Kendall*, A. J. Cs.) BRIJ MOHAN SINGH *v.* RAM MILAN SINGH. **39 I. C. 433=4 O L J 124.**

———*Partition—Evidence of—Entries in revenue papers.*

Entry in revenue papers of the name of the widow does not establish separation. (*Stuart and Kanhaiya Lal*, A. J. Cs.) BAKHTAWAR SINGH *v.* RAM SINGH. **36 I.C. 44=3 O.L J. 289.**

———*Partition—Evidence of—Entries in revenue papers.*

Entries in revenue papers resulting from order passed by Revenue Courts do not confer any title or constitute strong evidence of partition. (*Lindsay*, J. C.) KANDHAIYA BUX SINGH *v.* SHEO BUX SINGH. **20 I C. 861.**

———*Partition—Evidence of—Proof.*

Where a Hindu family is once proved to be joint there is a presumption in favour of the continuance of such jointness till the contrary is proved. (*Piggott*, J. C.) GAYA KUNWAR *v.* DAL SINGH. **17 I.C. 296.**

———*Partition — Evidence of — Common living—Joint purse—Effect of.*

It is not necessary that definite evidence should be given of a formal agreement between the parties to enable a Court to hold that a separation had taken place. An inference of separation having previously taken place may be drawn from the subsequent acts of the parties without any proof of a formal agreement. But where the parties are found living together in the same house and meeting their expenses out of a common fund, it would require much stronger evidence than anything which was produced in the case to lead to the conclusion that they had put an end to their state of jointness. (*Miller*, C.J. *and Foster*, J.) TARINI PRASHAD SINGH *v.* NUNU PRASAD SINGH. **72 I.C. 1006.**

———*Partition — Evidence of — Mutation entries—Value of.*

Statements in Mutation Petitions and Land Registration Records, giving the shares of each member of a joint family, will not suffice to establish a partition of the joint family, unless they show a clear and unequivocal intention to separate. (*Mullick and Bucknill*, JJ.) GOBIND PERSHAD *v.* BRIJ RAJKUMAR. **61 I.C. 369.**

———*Partition—Evidence of—Mortgage—Intention of partition.*

Intention to partition cannot be inferred from a mortgage-bond hypothecating the

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mortgagor's interest in the family property. (*Miller*, C.J. *and Mullick*, J.) AMAR DAYAL SINGH *v.* HAR PERSHAD SAHU.
5 P.L.J. 605=58 I.C. 72=1 P.L.T. 511.

———*Partition — Evidence of — Family arrangement—Appeal—Finding of—Partition accepted—Family arrangement set aside—Procedure—Legality of.*

Where the trial Court found in a partition suit that there was a partition as a family arrangement and the Appellate Court accepted the finding on partition but set aside the family arrangement; *held* the finding as to partition having been accepted, the decision against the family arrangement was unsupportable. (*Coutts and Sultan Ahmed*, JJ.) DAL BHANJAN SINGH *v.* KARIMAN SINGH.
57 I.C. 413=1 P.L.T. 465.

———*Partition—Evidence of.*

An order passed by a settlement officer in preparing a record of rights does not raise a presumption of separation in status, his decision being on factum of possession without any reference to the rights of a co-parcener in such possession. (*Miller*, C.J. *and Imam*, J.) RAM DAYAL MAHTO *v.* UTTIM MAHTO.
46 I.C. 255=6 P.L.W. 122.

———*Partition—Evidence of.*

To find out whether there has been a partition or not, the whole circumstances of each particular case must be investigated and the intention of the parties ascertained. (*Roe and Coutts*, JJ.) RAMESWAR MISSER *v.* SURESHWAR MISSER. **46 I.C. 252.**

———*Partition—Evidence of.*

Alteration of the mode of enjoyment is not sufficient to effect a partition. There must be an alteration and intention to alter the title. 21 W.R. 214 (P.C.), Foll. (*Pratt*, J.C., *Crouch and Fawcett*, A.J. Cs.) MANGHIRMAL *v.* VITHAL RAM. **13 I.C. 225=6 S.L.R. 107.**

Partition—Father.

———*Partition — Father's power — Sons, when bound—Allotment to a stranger.*

Although a partition made by a Hindu father, may, under some circumstances bind his minor sons, yet, if on the partition a share is given to an absolute stranger, the partition may be impeached as a dispossession of property made without consideration, unless it can be supported as a *bona fide* compromise of a disputed claim. 30 I.A. 139, 150, Dist. (*Sir Samuel Griffith*). RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHPAL. **40 Cal. 966=(1913) M.W.N. 661=14 M.L.T. 163=**

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17 C.W.N. 1189=18 C.L.J. 237=15 Bom. L.R. 867=11 A.L.J. 868=25 M.L.J. 512=10 N.L.R. 1=20 I.C. 953=40 I.A. 218 (P.C.).

———*Partition—Father — Consent of co-parceners—Effect.*

Consent by the members to a partition by the father binds not only the consenting members but also their sons as they represent their respective branches of the family. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEO DAN SINGH. **35 All. 337=25 M.L.J. 188=17 C.W.N. 949=(1913) M.W.N. 515=11 A.L.J. 698=14 M.L.T. 11=18 C.L.J. 57=15 Bom. L.R. 652=19 I.C. 826=40 I.A. 161 (P.C.).**

———*Partition—Father—Father's power to effect—Will.*

The father or manager of a joint Hindu family cannot effect a partition by will of ancestral property. 2 Mad. 317, Dist. (*Le-Rossignol and Wilberforce*, JJ.) NAND LAL *v.* DEWAN CHAND. **78 P.W.R. 1918=76 P.L.R. 1918=45 I.C. 162=86 P.R. 1918.**

———*Partition—Father—Represents sons—Preliminary decree—Effect of.*

A preliminary decree passed against a Hindu father for partition is presumably passed against him as representing his undivided family and binds his sons. On his death the plff. is entitled to add his sons as his legal representatives or even as parties whose names should be deemed to be already on the record as representing their father till his death and which names are merely sought to be inscribed on the record openly after his death. (*Sadasiva Aiyar and Spencer*, JJ.) ALUR LAKSHMI NARASIMHA SASTRULU *v.* VENKATA NARASAMMA.
52 I.C. 614.

———*Partition—Father—Power of—Objection by sons—Devise of father's share.*

A Hindu father can effect partition against the will of his sons. 2 Mad. 317; 31 M.L.J. 147; 32 M.L.J. 439, Foll. Where a Hindu father effects a division with the consent of one of his sons but against the wishes of others he must be deemed to have exercised his power as father and effected the partition. If the father registers the partition deed and subsequently devised the items falling to his share to one of his sons the bequest is valid. Where there is a power conferred on the father to divide the mortgaged property if purchased by him in execution and the father purchases the property in the name of a junior co-parcener there is a fraud on the power and the properties are available for division. (*Ayling and Seshagiri Iyer*, JJ.) NATESA IYER *v.* SUBRMANIA IYER. **23 M.L.T. 307=45 I.C. 635=(1918) M.W.N. 703.**

HINDU LAW—Partition—Father.

———*Partition — Father — Grandfather's power—Deed of gift.*

Grandfather can effect a partition between himself and his grandsons and make a gift of his share by the same instrument. The partition is valid if it is equal and fair. (*Abdur Rahim and Oldfield*, JJ.) AIYAVIER *v.* SUBRAMANIA IYER. **32 M.L.J. 439 = 40 I.C. 205 = 6 L.W. 22.**

———*Partition—Father—Right of.*

A Mitakshara father can effect a partition of the family properties among his sons without their consent. (*Abdur Rahim and Phillips*, JJ.) MURUGAYYA *v.* PALANIYANDI. **31 M.L.J. 147 = 36 I.C. 507 = (1916) 2 M.W.N. 284.**

———*Partition—Father — Power to effect partition.*

Under Hindu Law, a father can separate one or more of his sons from himself, in which case there is no presumption of division between the father and the other sons by another wife and in such a case a decree passed against the separated sons cannot be executed against the whole property. (*Napier and Srinivasa Iyengar*, JJ.) RANGASWAMI NAIDU *v.* SUNDARARAJULU NAIDU. **35 I.C. 52 = 31 M.L.J. 472.**

———*Partition—Father—After-born sons—Right of.*

When a compromise by a father on behalf of himself and his son is set aside, it is nevertheless binding on the father's share as it stood at the date of the compromise. The remaining portion continues to be joint and after-born sons can participate therein. (*Wallis*, J.) GANESH ROW *v.* TULJA RAM RAO. **24 I.C. 696 = 26 M.L.J. 460.**

———*Partition—Father—Power to effect—Self-acquired property—Registration.*

Under the Mitakshara a father can make a partition of his self-acquired properties for the benefit of his sons. Such a partition is not a gift and can be effected without a registered deed. (*Batten*, A.J.C.) LAXMAN *v.* TAYYA. **51 I.C. 93 = 15 N.L.R. 93.**

———*Partition—Father—Effect on son of co-parcener.*

A partition is binding on a son unless he can show some legal ground for setting it aside as fraud, or that the amount received by his father was not a fair equivalent of his share. A separation of Hindu father leaving his sons joint is an unusual thing. (*Sabonadiere and Kanhaiya Lal*, A.J.Cs.) CHHOTE LAL *v.* BADRI SINGH. **22 I.C. 129.**

HINDU LAW—Partition—Female sharers.

Partition—Female Sharers.

———*-Partition—Female sharer—Share of a grand mother.*

A Grandmother is entitled a grand son's share in partition with her grand sons. (*Gokul Prasad*, J.) KANHAIYALAL *v.* GERA. **1923 All. 436.**

———*Partition — Female sharers— Step-mother—Share of.*

A step-mother is entitled upon partition of joint family property to share equal to that of a son. (*Richards*, C.J. *and Rafique*, J.) HAR NARAIN *v.* BISHANBHAR NATH. **38 All. 83 = 31 I.C. 907 = 13 A.L.J. 1129.**

———*Partition—Female sharers — Grand-mother—Share of.*

The Mitakshara Law does not enable a grandmother to claim a share at the time of the partition between a father and his sons. 34 All. 505, Ref. (*Richards*, C.J. *and Banerji*, J.) CHUMMUN PRASAD CHOUBE *v.* PRANPAT CHOUBE. **29 I.C. 166**

———*Partition — Female sharer — Grand-mother—Benares School.*

On a partition between a father and his sons, the father's mother does not get a share according to the Benares School. 3 All. 118, Foll.; 8 Cal. 649, Diss.; 7 Cal. 191; 9 W.R. 61, Dist. and Not Appl. Works of Yagnavalkya and Mitakshara make a distinction between partition during lifetime of the father and partition after his death. In the former case, a share is allotted to the father's wife in the latter, to the mother of the sons affecting partition. (*Richards*, C.J., *Banerji and Tudball*, JJ.) SHEO NARAIN *v.* JANKI PRASAD. **34 All. 505 = 16 I.C. 88 = 9 A.L.J. 749.**

———*Partition—Female sharers—Mother's share—Legitimate and illegitimate sons—Lewa Kunbis.*

Under Hindu Law, among Sudras, a mother is entitled to a share when the property is divided between the legitimate as well as the illegitimate sons of the deceased. (*Macleod*, C.J. *and Shah*, J.) MANCHHARAM BHIKU *v.* DATTU. **54 I.C. 110 = 21 Bom. L.R. 1172.**

———*Partition—Female sharers—Right of mother to a share.*

The mother's right to a share on partition accrues only on the final decree. 9 W.R. 61; 33 All. 118; 34 All. 234 (P.C.); 43 Cal. 1031 (P.C.), Ref. (*Batchelor* A.C.J. *and Shah*, J.) RAOJI BHIKAJI *v.* ANANT LAXMAN. **42 Bom. 535 = 46 I.C. 760 = 20 Bom. L.R. 671.**

HINDU LAW—Partition—Female sharers.

———*—Partition—Female sharers — Grandmother — Step-grandmother entitled to a share.*

Under the Mitakshara School a step-grandmother is entitled to a share of the family estate when it is partitioned among her grandsons. (*Heaton and Shah*, JJ.) VITHAL *v.* PRAHLAD. **39 Bom. 373=28 I C. 967=17 Bom. L.R. 361.**

———*—Partition—Female sharer—Mother—Rights of—Maintenance.*

Under the Hindu law it is only in the event of a partition among her sons that a mother becomes entitled to a share in lieu of her maintenance. 16 C. 758; 31 C. 262, Rel. (*Mookerjee and Chotzner*, JJ.) JADU NATH SIRKAR *v.* HARAN CHANDRA SARKAR. **36 C.L J. 217=49 I.C. 1043=1928 Cal. 221.**

———*—Partition — Female sharers— Bengal school—Mother's share—Nature of.*

The share obtained by a mother in Bengal on partition among her sons is in lieu of her right to maintenance; it is covered out of the sons' shares and on her death becomes part of the shares out of which it came. (*Rankin*, J.) SHASHI BHUSAN SHAW *v.* HARI NARAIN SHAW. **48 Cal. 1059=66 I C. 705=25 C.W N. 990.**

———*—Partition—Female sharers — Dayabhaga—Mother.*

A Dayabhaga Hindu mother cannot compel a partition among her sons but is entitled to an equal share, if a partition takes place. She gets her share even in a partition between the sons and an alienee of the shares of one or more of the sons. The stridhan received by her from her husband or father-in-law and not that from her father, must be deducted from that share. (*Mookerjee and Buckland*, JJ.) JOGOBHANDU *v.* RAJENDRA NATH. **66 I.C. 121=34 C.L.J. 29.**

———*Partition— Female sharers—Mother's share—Absolute right—Special agreement.*

By special agreement or agreement with her sons, a Hindu widow can get on partition with her sons, absolute right to the portion of her husband's estate, allowed to her. (*Newbould*, J.) DUKHIL RAM MALI *v.* NEWAJ ALI. **53 I C. 426.**

———*—Partition—Female sharers—Mother—Maintenance.*

Under the Mitakshara Law a mother has a right only to maintenance until partition; she can never herself demand a partition. But if a partition takes place she will be entitled to receive a share if the effect of that partition is to break up or diminish the estate which was the source of her maintenance. Where a co-sharer in a joint estate having applied for partition, the widow of the last male owner sued for a declaration of her title to a share in the estate: *Held*, she was entitled to a share equal to that of the co-sharers and the suit was maintainable. 60 P.R. 1895, Foll. (*Shadi Lal and Broadway*, JJ.) MUSSAMAT GANESH DEVI *v.* DARSAN SINGH. **2 U P.L.R. (Lah.) 100=56 I.C. 478=2 Lah. L.J. 377.**

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———*—Partition—Female sharers—Partition between one brother and auction-purchaser of the other brother—Mother entitled to an equal share.*

Where the share of one of the two joint brothers is transferred, at a partition between the other brother and the transferee, the mother is entitled to a share equal to that of each of the sons and after her death half of her share will go to his transferee. (*Kotval*, A.J.C.) RAMANATH *v.* SITARAMA. **19 N.L.R. 147=1923 Nag. 288.**

———*—Partition—Female sharers—Mother's right to share.*

On a partition between sons and step-sons, under the Mitakshara, a mother is entitled to a share equal to that of her son. The possession of separate property as *stridhan* by the mother might have the effect of reducing *pro tanto* the share to which she may be entitled on partition. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SARUB CHAND *v.* MUSSAMMAT PANI. **37 I C. 198=19 C.C. 240.**

———*—Partition— Female sharers— Stepmother.*

Under the Mitakshara Law in a partition between sons, the step-mother is entitled to a share equal to that of a son. (*Jwala Prasad and Coutts*, JJ.) SUBBA RAUT *v.* MANLA RAUTAIN. **47 I.C. 204.**

Partition—Illegitimate son.

———*Partition—Illegitimate son—Share of — One half of share allotted to legitimate son.*

In a partition after father's death the illegitimate son gets half of the share actually allotted to his legtimate brother and not one-half of what a legitimate son would get in his place. (*White*, C.J. *and Sankaran Nair*, J.) CHELLAMMAL *v.* RANGANATHAM PILLAI. **12 I C. 247=34 Mad. 277.**

Partition—Institution of suits.

———*Partition—Institution of suit—Dismissal of—Effect.*

The institution of a suit for partition by a member of a joint Hindu family governed by

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the Mitakshara Law is an unequivocal intimation of his intention to separate and there is a severance of the joint status from the date of the institution of the suit. The fact that the Court dismissed the suit on the ground that there was no justification for the same would not prevent the disruption of the joint status. A decree of Court is necessary only for working out the result of the severance and allotting definite shares. (*Viscount Haldane*). KAWAL NAIN *v.* BUDH SINGH. **39 All. 496 = 15 A.L.J. 581 = 2 Pat. L.W. 57 = 21 C.W.N. 986 = 33 M.L.J. 42 = 19 Bom. L.R. 642 = 26 C.L.J. 101 = (1917) M.W.N. 514 = 6 L.W. 330 = 40 I.C. 286 = 44 I.A. 159 (P.C.).**

[On Appeal from 19 I.C. 430.].

———*Partition--Institution of suit—Division in status.*

Once a member of a joint Hindu family governed by the Mitakshara clearly and unequivocally intimates either by express declaration or by his conduct to his co-sharers his desire to sever himself from the joint family, his right to obtain and possess his share, is unimpeachable, whether or not the co-sharers agree to a separation and there is an immediate severance of the joint status. 35 All. 80 (P.C.); 11 M.I.A. 75; 18 Cal. 157; 10 W.R. 273; 6 I.A. 228; 8 W.R. 82, Ref. If a member so intimates his desire and institutes a suit for partition, but dies before obtaining a decree, his widow is entitled to continue the suit and to inherit her deceased husband's share in the joint property. (*Mr. Ameer Ali.*) MUSSAMMAT GIRIJA BAI *v.* SADASIV DHUNDHIRAJ. **43 Cal. 1031 = 31 M.L.J. 455 = 20 C.W.N. 1085 = 14 A.L.J. 822 = 20 M.L.T. 78 = 12 N.L.R. 113 = 18 Bom. L.R. 621 = (1916) 2 M.W.N. 65 = 4 L.W. 114 = 24 C.L.J. 207 = 37 I.C. 321 = 43 I.A. 151 (P.C.).**

———*Partition—Institution of suit—Minor—Civ. Pro. Code, O. 32, R. 12.*

A minor's suit for partition through his next friend cannot affect the status of the joint family as the minor has no right to demand separation. But the case is different, if the minor attains majority during the pendency of the suit, and elects to proceed with it under O. 32, R. 12, because he at once acquires the rights of the grown up person, dissolving the jointness of the family. (*Mears, C. J. and Banerjee and Piggott, JJ.*) LALTA PRASAD *v.* SHEAM SINGH. **42 All. 461 = 2 U.P.L.R. (All.) 187 = 38 I.C. 667 = 18 A.L.J. 503 (F.B).**

———*Partition—Institution of suit—Declaration of plaintiff's share of a revenue paying estate.*

The presentation of a plaint by which the Court is asked to ascertain and to delegate the share of the plaintiff in property which had formerly belonged to a joint family of which the plaintiffs and defendants were members, dissolves the status of joint family as between the parties to the litigation. (*Rafique and Piggott, JJ.*) RUPAN RAI *v.* SUBKARAN RAI. **41 All. 207 = 49 I.C. 367 = 17 A.L.J. 112.**

———*Partition—Institution of suit—Effect on defts. inter se—Separation of one member.*

The filing of suit by one member of the joint Hindu family declaring his desire for partition and specific share, amounts to separation amongst all. But if one member of joint Hindu family separates himself without suit and relinquishes his rights either taking no share, less share or greater share, it does not follow that the surviving members cannot remain united as before. Though separation of one member would involve the ascertainment of the shares of others and is a virtual separation of all it does not alter the ordinary devolution of joint Hindu family property if there never was a break in the jointness between surviving members. (*Richards, C.J. and Banerji, J.*) PURSOTAM DAS *v.* JAGANNATH. **41 All. 361 = 50 I.C. 357 = 17 A.L.J. 347.**

———*Partition—Institution of suit.*

A decree declaring a right to partition is insufficient to change the character of the property and it continues to be joint until an actual partition takes place. (*Batchelor and Rao, JJ.*) JAGU BABAJI VARANG *v.* BALU LAXMAN VARANG. **37 Bom. 307 = 17 I.C. 965 = 14 Bom. L.R. 1198.**

[This is no longer law. See 37 I.C. 321 = 43 Cal. 1031 (P.C.).]

———*Partition—Institution of suit.*

Per *Chandavarkar, J.*—The judgment to operate as a severance of interest must contain a clear adjudication that each co-parcener is entitled to a share definitely fixed. (*Chandavarkar and Batchelor, JJ.*) BABABJI AKOBA *v.* DATTU LAXMAN. **37 Bom. 64 = 17 I.C. 642 = 14 Bom. L.R. 923.**

[This is no longer law, See 43 Cal. 1031 (P.C.)].

———*Partition—Institution of suit—Preliminary decree—Severance in status.*

Although the trial Court's decree in a partition suit was under appeal, yet it was still a final decree of a competent Court, as soon as that decree was made, it determined the legal status or relation of the parties, and the severance of interest so effected by the decree, at the moment it was pronounced could be displaced only by a legal decision in appeal. The mere pendency of an undecided appeal

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does not in any way mar the validity or the force of an existing decree. (*Batchelor*, J.) MAHADEOLAXMAN *v.* GOVIND PARASHRAM. **36 Bom. 550=16 I.C. 991=14 Bom. L R. 783.**

———*Partition—Institution of suit—Withdrawal.*

Where a junior member sues the manager for partition of his share not making the other coparceners parties, the decree in the suit which merely allots his share of the properties does not affect a division as between the other members and the manager. It is open to a coparcener who has filed a suit for partition to abandon that intention before the suit proceeds to a decree and to continue in a state of jointness. In such a case the filing of the plaint does not effect a severance. Where a partition takes place under a decree of Court whereby one member claims his share and obtains it, the effect of the decree on the remaining coparceners must be determined by the terms of the decree or where it is ambiguous by the scope of the suit. 25 Mad. 149; 30 Cal. 725 (P.C.); 31 Mad. 482; 29 All. 93; 31 M.L.J. 472, Rel,; 33 M.L.J. 759. *Ref.* (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) PALANIAMMAL *v.* MUTHUVENKATACHALA MANIGARAR.
43 I.C. 833=33 M.L J. 759.

———*Partition—Institution of suit—Effect of—Alienation of his share by one member if effects severance.*

An unambiguous declaration of his intention to divide, by a member of a joint Hindu family, is enough to effect a severance of the joint status so far as he is concerned. 35 All. 80, (P.C.). Foll. Consequently, a member of a joint Hindu family becomes separated from the other member by the mere fact of suing them for partition. Per *Sadasiva Aiyar*, J.—A member of a joint Hindu family who sells away his share in all co-parcenary property becomes severed from the joint family and the alienee becomes a tenant-in-common with the other coparceners in respect of the share so alienated. 25 Mad. 690; 35 Mad. 47; 21 M.L.J. 1041; 23 M.L.J. 64, Foll.; 26 M.L.J. 576; 26 M.L J. 460; 37 M.L.J. 409, Diss. (*Wallis*, C.J., *Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUNDARA RAJAM *v.* ARUNACHELLAM CHETTY.
39 Mad 136, 159=(1916) 1 M W.N. 31=29 M.L J. 793, 816=18 M.L.T. 552, 568=35 I.C. 858=2 L.W. 1247, 1266.

———*Partition — Institution of suit—Preliminary decree—Effect—Legal representative.*

A preliminary decree for partition effects the severance of the members of a joint Hindu family. If the plff. dies issueless after the passing of such decree, his proper legal representative is his widow. (*Hannay*, J.) MAMMA REDDI SATTIRAJU MAMMA REDDI *v.* MAMMA REDDI AMMAYI. **28 I.C. 543=2 L.W. 325.**

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———*Partition — Institution of suit — Decree.*

The decree for partition effects a complete division of the joint family property. The fact that certain property was left out being unknown at the time would make no difference. (*Abdur Rahim and Spencer*, JJ.) SEGU CHIDAMBARAMMA *v.* SEGU BALAYA.
12 I.C. 704=(1911) 2 M,W.N. 467.

———*Partition—Institution of suit—Decree—Appeal—Subsequent event, effect on decree.*

That the decree of the Court of first instance effected severance there appears to be no reason why the subsequent filing of appeal should be held to effect reunion and justify Appellate Court in making fresh distribution of share according to the condition of the family at the date of the decision of appeal and no depriving parties or their representatives of their original shares. (*Wallis and Sankaran Nair*, JJ.) THANDAYUTHAPANI *v.* RAGUNATHA. **33 M. 239=21 M.L.J. 240=9 M.L.T. 421=10 I.C 660=(1911) M.W.N 223.**

———*Partition — Institution of suit by minor.*

The institution of a suit for partition of joint family property by a minor does not effect severance of the interests of the parties. (*Hallifax and Macnair*, A.J.Cs.) GANGLA *v.* GHINGRYA. **63 I.C. 595.**

———*Partition—Institution of suit—Preliminary decree.*

A decree in a partition suit effects a severance of joint status and persons who were joint before, are not entitled to any increment of their share by reason of subsequent death of a party as the widow of the deceased person is preferential heir. 35 Mad. 239, Foll. (*Mitra and Prideaux*, A.J.Cs.) RUSTOM RAO *v.* DINKAR RAO. **55 I.C. 38.**

———*Partition—Institution of suit.*

Unequivocal intimation, either by express declaration or by conduct of intention to sever, effects partition. The institution of a suit, therefore effects severence of the plaintiff before decree and the widow can continue the suit. 43 Cal. 1031, Ref. A division of rights is sufficient to constitute partition. (*Lindsay*, J.C.) RAMADHIN *v.* BISHESHAR DAYAL.
37 I.C 111=3 O.L.J. 508.

———*Partition — Institution of suit — Minor.*

The institution of a suit for partition is sufficient indication of an intention to separate and the birth of a co-parcener subsequent to that date does not affect the share of the plff.

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The institution of a suit by a minor member of a joint Hindu family for partition of the family property may amount to a separation though the minor acts through his guardian. (*Miller*, C.J. *and Mullick*, J.) KRISHNA LAL JHA *v.* NANDESHWAR JHA. 4 P L J. 38 = 44 I.C. 146.

Partition—Minor.

——*Partition—Minor—Partition decree—Effect of.*

Where the estate had not been partitioned though the decree in favour of an infant son against father for partition has been made, *held*, the decree declaring certain alienation by father void cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster*). NARAIN DAS *v.* ABINASH CHANDER. L.R. 3 (P.C.) 129 = 31 M.L T. (P.C.) 217 = 16 L.W. 780 = (1922) M W.N. 791 = 4 U.P.L R. (P.C.) 111 = 27 C W.N. 299 = 21 A.L.J. 201 = 44 M.L J. 728 = 37 C.L.J. 457 = 1922 P.C. 347 (P.C.).

——*Partition—Minor—When bound.*

Partition fairly and honestly obtained against the managing member of a Hindu family, is binding on a minor member though no guardian had formally been appointed for such minor during the partition proceedings. (*Tudball and Rafique*, JJ.) BHAGWATI PRASAD *v.* BHAGWATI PRASAD. 38 All. 126 = 17 I C. 846 = 11 A L J. 76.

——*Partition—Minors—Agreement to remain united.*

The absence of contractual capacity in minor does not mean that after a partition in a Hindu family minors have no option but to remain divided. In all such cases it is the duty of the guardian to make as good and beneficial arrangement as he possibly can. An arrangement fair in method and result will bind the minor's estate. (*Rankin*, J.) SHASHI BHUSAN SHAW *v.* HARINARAIN SHAW. 48 Cal. 1059 = 66 I.C. 705 = 25 C.W.N. 990.

——*Partition—Minor—Malversation.*

Actual malversation of property by father need not be proved to enable a minor son to claim partition; if the property is shown to be in danger, it is sufficient. The possibility of future birth in the family is not a ground for partition by the minor nor the fact that the minor's father has married a second wife and the minor's mother is living apart. Court

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should not allow partition unless the minor's interests are likely to be advanced or protected. 4 Bom. L. R. 883, Expl.; 29 All. 373; 14 Bom. 99; 41 Mad. 442; 31 Bom. 373, Ref. (*Abdur Rahim and Napier*, JJ.) PALANI GOUNDAN *v.* KASI GOUNDAN. 50 I C. 552.

——*Partition—Minor—Allotment of extra share to one member — Minors not bound—Mother acting as guardian—Share to one member—Relinquishment of share—How effected—Mother's right to act as guardian.*

The claim of the eldest son under the Hindu Law to Jyeshtabhagam (or extra share) having long become obsolete, the act of the guardian of the plffs. (minor members) in assenting to such a share being given was not binding on them and that plffs., subject to the law of Limitation, were entitled to claim a fourth of the extra share given to the deft's. branch. The giving up of the extra share by the senior branch can only be by a registered deed and mere joint living, joint managements, failure to maintain accounts, incurring expenditure in common and joint acquisitions would not render the extra share co-parcenary property. Under the Hindu Law, the mother has no right to represent her sons in respect of joint family property except in case of a partition between her sons and the other members of the family. (*Abdur Rahim and Ssshagiri Aiyar*, JJ.) VENKATA REDDI *v.* KUPPA REDDI. (1918) M. W. N. 680 = 47 I C. 716 = 8 L. W. 400.

——*Partition—Minor—Not bound, if property allotted to stranger.*

Per *Kumaraswami Sastri*, J.:—An agreement whereby a considerable portion of joint family property has been excluded from partition and given to persons who have no legal claim whatever cannot be binding upon the minor sons simply because their father is a party to it unless it can be supported as a *bona fide* compromise of a disputed claim. 40 Cal. 966, Foll. (*Wallis*, C.J. *and Kumaraswamy Sastri*, J.) PALANIAMMAL *v.* MUTHUVENKATAHALA MANIGARAR. 43 I.C. 833 = 33 M.L.J. 759.

——*Partition—Minor—Intention to separate must be informed to guardian.*

In the case where there are minor co-parceners, the intention to separate by one member must be communicated to the natural guardian of the minor. A recital in a sale-deed by the elder of two brothers that he was divided was held insufficient to effect a division as it was not communicated to the mother of the younger brother, a minor. 39 All. 496 P. C.; 43 Cal. 1031, P.C., Ref. and Dist. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) KAMEPELLI AYILAMMA *v.* VENKATASWAMY. 33 M.L.J 746 = 22 M.L.T. 508 = (1918) M.W.N 136 = 43 I.C. 130 = 8 L.W. 24.

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———*Partition—Minor—Institution of suit—Effect.*

Filing of a plaint by a minor for partition does not *ipso facto* effect a severance of joint status since adults only can declare their intention to partition. In such a suit the Court may or may not decree partition. On the minor's death his legal representative cannot as of right claim to be substituted. (*Abdur Rahim and Oldfield*, JJ.) CHELLMI CHETTY *v.* SUBBANNA. **41 Mad. 442 = (1917) M.W.N. 792 = 22 M.L.T. 432 = 42 I.C 860 = 34 M.L J 213.**

———*Partition—Minor—Partition against father—Malversation.*

A minor plff. can file a suit for partition if there are circumstances showing that it would be for his interest to separate his share, and it is not necessary to prove malversation on the part of the adult members. 19 Bom. 39, Foll. Where a father sets up a hostile right and denies the rights of a minor son to any share of the joint family properties and the father was living apart from his wife with a concubine. *Held*, that a suit for partition would lie and it was the duty of the Court to safeguard the minor's interest by declaring his rights and giving effect to such a declaration. 3 M.H.C. R. 94; 12 Mad. 401, Ref. (*Kumaraswami Sastri*, J.) SADAGOPA NAIDU *v.* THIRUMALAISWAMI NAIDU. **30 I.C. 272 = 18 M.L T. 129.**

———*Partition—Minor— Suit to set aside by member who was minor at the time and was represented by a natural guardian—Onus.*

A partition of the property of a joint Hindu family, some of the members of which are minors at the time and are represented by their natural guardians is as binding on them as on the adult members, provided there is no negligence or fraud on the part of the guardian, the onus of proving which lies on the minor. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) YECHURI RAMA MURTHI *v.* YECHURI RAMAMMA. **30 M.L.J. 308 = 33 I C. 961 = 3 L.W. 322.**

———*Partition—Minor—Consent to partition by mother on behalf of her minor son.*

In case of a joint family consisting of an uncle, his minor nephew and the latter's mother, the mother can give consent to a partition, on behalf of the minor and the mere fact that the uncle was at such time dangerously ill will not vitiate the consent inasmuch as the law takes no notice of the probability of a person's death as a cause for refusing consent to a partition which a member has right to demand at any time. (*Sankaran Nair and Oldfield*, JJ.) POTHI NAICKEN *v.* NAIKER. **(1915) M.W.N. 303 = 17 M L.T. 300 = 28 I.C. 625 = 28 M.L J. 423.**

HINDU LAW—Partition—Oral.

———*Partition—Minor—Right of co-parcener.*

The existence of minor co-parcener is no bar to the right of a co-parcener to claim partition. 30 Cal. 738, Foll. (*Drake Brockman*, J.C.) BALI *v.* GIRJI. **20 I.C. 563 = 9 N L.R. 111.**

———*Partition—Minor—Re-opening of.*

Where a minor's father's step-mother represents him at a partition of the family properties, the minor having no other competitive guardian, the partition is binding on the minor until set aside. (*Lindsay*, J. C. *and Kanhaiya, Lal*, A.J.C.) KALI PRASAD *v.* RAM RATAN. **49 I.C. 67 = 5 O L.J. 747.**

———*Partition—Minor—When bound.*

A Mitakshara son can sue for partition of ancestral property in the lifetime of his father. The partition decree binds a minor though he is unrepresented in a partition suit, in the absence of prejudice. (*Mullick and Atkinson*, JJ.) AJODHYA PRASAD *v.* MANOHAR PRASAD. **40 I.C. 131 = 3 P.L.W. 366.**

Partition—Onus of proof.

———*Partition—Onus of proof.*

According to *Mitakshara*, when a son is born to a man governed by Hindu Law he and that son at once form a joint undivided Hindu family, and anybody later on asserting that they were not at any given time such a family must prove disruption before that time. 5 P. R. 1913, Expl. (*Johnstone*, C. J. *and Le Rossignol*, J.) NARPAT RAI *v.* DEVI DAS. **85 P.R. 1915 = 31 I.C. 634 = 358 P.W.R. 1915.**

Partition—Oral.

———*Partition—Oral—Validity.*

A partition of immoveable property not being either an 'exchange', 'sale', 'mortgage' or 'lease' can be effected by oral arrangement and need not be in writing and registered. The fact that the rights relinquished mutually, under an oral partition, are to continue for periods of long duration does not effect the question whether partition should be effected by written instruments. (*Dalton and Fitzgerald*, (1897) 2 Ch. D. 86, Dist.; 7 W. R. 35 (P.C.), Ref. 4 M. L. T. 354; 35 Mad. 423; 13 M. L. J. 500; 22 Mad. 522, Foll. (*Sadasiva Iyer and Napier*, JJ.) ALAMELU AMMAL *v.* BALU AMMAL. **16 M L T. 592 = (1915) M.W.N. 26 = 26 I C. 455 = 28 M.L.J. 685.**

———*Partition—Oral.*

The provisions of the T. P. Act do not apply to a partition of joint family property by private arrangement which does not require an instrument of writting. (*Twomey*, J.) MA SHEIN NYUN *v.* MAUNG YU. **25 I.C. 498.**

HINDU LAW—Partition—Partial Partition.

———*Partition—Partial partition—Competency of members to enter into.*

Members of a joint Hindu family may make a division and severance of interest in respect of a part of the joint estate whilst retaining their status as a joint family and holding the rest as the properties of a joint undivided family. 11 M. I. A. 75 P. C. Ref. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI.

43 M. L. J. 428=30 M. L. T. 255 (P. C.)=
45 Mad. 489=(1922) M. W. N. 399=
26 C. W. N. 929=16 L. W. 639=
20 A. L J. 839=24 Bom. L. R. 1209=
49 I. A. 168=1922 P. C. 201 (P. C.)

———*Partition— Partial partition—One co-parcener separating—Remainder remain joint or not depends on agreement.*

Whether the remaining co-parceners remain joint or not after one of them has separated depends on the agreement between them, and this being a question of fact requires to be proved as such. (*Wallis, J.*) KUNDAN *v.* MOHANI KUNWAR.

3 U. P. L. R. (All.) 69.

———*Partition—Partial partition—Proof.*

The filling of a partition suit, amounts to separation but where one member separates himself from the family without a suit, either by taking no share or less share, the other members can remain united. If it is necessary to fix the shares of all the members, when only one member separates his separation means virtually separation of all. But this principle does not affect the ordinary devolution of joint property when there is no break in the jointness of the family. (*Richards, C. J. and Banerji, J.*) PARSHOTAM DAS *v.* JAGANNATH.

41 All. 361=50 I. C. 357=
17 A. L. J. 347.

———*Partition—Partial partition—Presumption—Property kept joint—Status of co-parceners.*

Once there is evidence sufficient to satisfy the court that the parties intended to sever, then the joint family status is put an end to, and with regard to any of the property which had hitherto been joint and has not been divided by metes and bounds there will have to be an express agreement between the parties that they should treat that property as belonging to them as joint tenants. They will then be joint tenants not as members of the joint family which no longer exists but under a special agreement made after the severance. 43 I. A. 151; 18 B. 611 Ref. (*Macleod, C. J. and Crump, J.*) DAGADU GOVINDA *v.* SAKUBAI.

47 Bom. 773=25 Bom. L. R. 806=
1924 Bom. 31.

———*Partition—Partial partition—Portion left undivided—Presumption as to.*

When members of a joint family divide portion of the family property, a state of severance would in all probability result though it depends upon the circumstances in each case, and the facts provide, whether family still remained joint, each member holding his share of the property divided as his own separate property, and all the

members holding the undivided property as members of a joint Hindu family. Where it was found that a very large portion of the family property was divided in 1889 amongst the members and from that date they began to separate, and had separate business and enjoyment in respect of their respective properties, it would be a legitimate presumption that they intended from that date to live divided and consequently they would own the property still remaining undivided as tenants-in-common and therefore a widow of one of the members is entitled to a formal partition of the property left undivided. (*Macleod, C. J. and Crump, J.*) KASTURIBAI MANIBAI *v.* BAI MAHALAXMI

1923 Bom. 464.

———*Partition — Partial partition—Alienees from co-parceners—Rights of—Suit for general partition.*

Per Macleod, C.J.—There may be cases in which one co-parcener purports to convey his interest in a particular item of family property to a stranger, while the other co-parcener (taking the simplest case of two co-parceners) sells his interest in the same property to another stranger. In such a case a suit might lie by one stranger against the other for partition of that item of the family property which had been wholly disposed of by the persons who were entitled to it. But such an action between strangers should only be allowed in the very plainest of cases, when it has been proved that the whole of the family interest in the property has been disposed of either by joint action between the members of the family or by separate action against which no dispute has been raised.

Per Coyajee, J.—The purchaser of an unascertained share in a joint family property cannot insist upon the possession of any definite piece of property. The remedy of the purchaser lies in a suit to have that share and interest ascertained by instituting a suit for general partition in which the whole of the joint family property should be included and all necessary parties joined. In a suit of that nature the court, in making the partition, would endeavour to give effect to the alienation and "so to marshal the family property amongst the co-parceners as to allot that portion of the family estate or so much of it as may be just" to the purchaser.

A purchaser from a co-parcener of his share of an item of joint family property can work out his rights only by a suit for general partition. (*Macleod, C. J. and Coyajee, J.*) ISHRAPPA *v.* KRISHNA PUTTA.

46 Bom. 925=
24 Bom. L. R. 428=1922 Bom. 413

———*Partition—Partial partition.*

Where the members of a joint family separate they are to be considered as holding the joint family property as tenants in common and the burden is on the person who alleges that any portion of the family property is being held as joint tenants. (*Macleod, C. J. and Fawcett, J.*) RAMACHANDRA *v.* TUKARAM.

45 Bom. 914=
61 I. C. 761=23 Bom. L. R. 311.

HINDU LAW—Partition—Partial Partition.

———*Partition—Partial partition—One property left joint—Tenancy-in-common.*

Where at a partition, a portion of the joint family property is left joint in the hands of one member it continues to belong to all the members as tenants-in-common and the member in whose possession it is left holds it as an agent of the others. (*Macleod, C. J. and Fawcett, J.*) GABU NAROBA *v.* ZIPRU RAMSINGH.
45 Bom. 313=59 I. C. 357=22 Bom. L. R. 1289.

———*Partition—Partial partition—Suit for alienee.*

A suit for partial partition as against the alienee from a co-parcener is maintainable at the instance of the other co-parceners. 8 W. R. 1 (P. C.); 3 Cal. 198 (P. C.); 10 Cal. 626 (P. C.) Ref. to. (*Batchelor, C. J. and Kemp, J.*) HANUMANDAS RAMDAYAL *v.* VALABHADAS SANKARDAS.
43 Bom. 17=46 I. C. 133=
20 Bom. L. R. 472.

———*Partition—Partial partition—Presumption.*

A party alleging partition must prove it. Once a breach in the state of union is proved the law presumes there has been complete partition both as to parties and to property. Such presumption may be rebutted by proof of intention on the part of some to remain united or of re-union. (*Chandavarkar and Heaton, JJ.*) AMANDI BAI *v.* HARI SUBA PAI.
35 Bom. 293=10 I. C. 911=13 Bom. L. R. 287.

———*Partition—Partial partition—Presumption—Re-union.*

A partition by one member does not mean that the other co-parceners are *ipso facto* divided as between themselves and by arrangement the partition may be partial as regards the person separating. 30 Cal. 725 Dist. *Held*, that in this case there was no question of an agreement to reunite as all the parties were not divided. (*Rankin, J.*) SASHI BHUSHAN SHAW *v.* HARI NARAYAN.
48 Cal. 1059=66 I. C. 705=25 C. W. N. 990.

———*Partition—Partial partition—Rule against—Convenience.*

The rule that there cannot be a partial partition is elastic. When it is not inconvenient a partition of a dwelling-house can be separately decreed. (*Chauduri and Newbould, JJ.*) KALI CHARAN SINGHA *v.* KIRAN BALA DEBI.
51 I. C. 948=29 C. L. J. 494.

———*Partition—Partial partition—Transferee of co-parcener.*

Where one of several co-owners who are in possession of different parcels of land by mutual arrangement transfers his share in a parcel which is in the possession of his co-sharers the transferee can sue for partition of that parcel as against them. (*Mookerjee and Roe, JJ.*) SRISH CHANDRA *v.* MAIMA CHANDRA. 33 I. C. 17=
23 C. L. J. 231.

———*Partition—Partial partition—Suit for—Objectionable.*

A suit for partial partition is not maintainable. The objection is vital and will prevail though not raised in the court below or in the grounds

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of appeal to the High Court. (*Harrington and Carnduff, JJ.*) DOMAN LAL *v.* PROKASH LAL.
18 I. C. 866.

———*Partition—Partial partition—Separation of one member—Effect on the family.*

There can be no presumption when one co-parcener separates from the others that the latter remain united and unless it is shown that the rest of the members of the family agreed to remain joint it cannot be held that the minor was a member of the joint family to which the adult members belonged. (*Abdul Raoof, J.*) BASHESHAR NATH GOELA *v.* GANGA RAM. 1923 Lah. 572.

———*Partition—Partial partition.*

A family may remain joint in regard to some properties after a separation in regard to the others. The mere fact that there had been a partial partition of the family property does not affect the rights of the parties to sue for partition in regard to the other properties which remained undivided. (*Broadway and Zafar Ali, JJ.*) BHAGWAN DAS *v.* MT. PARBATI.
29 P. W. R. 1923=1923 Lah. 569.

———*Partition—Partial partition—Presumption.*

When partial partition of the property has been admitted the presumption is that there was a complete partition of all the properties. (*Scott-Smith and Abdul Raoof, JJ.*) KISHEN CHAND *v.* BEHARI LAL. 68 I. C. 297=2 Lah. L. J. 570.

———*Partition—Partial partition—Suit for.*

A suit for partition of property though it does not include lands in Patiala State over which the court has no jurisdiction can be maintained and a court need not take into consideration the property is in Patiala State. (*Le Rossignol and Broadway, JJ.*) MOTI RAM *v.* KANHAIYA LAL.
2 Lah. L. J. 514.

———*Partition — Partial partition—Presumption.*

If a partition takes place between members of joint family, the presumption is that the partition is in status and of all properties. If some properties are left undivided there is no presumption that the co-parcenary right subsists in those properties. (*Scott-Smith and Martineau, JJ.*) BOLA DEVI *v.* MOKHAM CHAND. 44 I. C. 561=
12 P. R. 1918.

———*Partition—Partial partition—Suit for.*

No suit lies for partition of a portion of a joint family property. 17 P. R. 1893, Dist.; 77 P. R. 1887.; 85 P. L. R. 1912; 7 Cal. 577; 70 P. R. 1912, Ref. (*Scott-Smith and Broadway, JJ.*) RANKU *v.* MT. HUKMI. 156 P.W.R. 1916=35 I.C. 545=
2 P. L. R. 1917.

———*Partition—Partial partition—Presumption.*

The presumption from a partial partition that the whole was divided is not a strong one where there is no evidence as to what property was previously divided. (*Shah Din and Scott-Smith, JJ.*) SHAM DAS *v.* POHLO RAM.
18 P. W. R. 1913=18 I. C. 604=
16 P. L. R. 1912 Supp.

———*Partition—Partial partition—Effect—Adverse possession.*

Where after a partial partition some lands are still left in the possession of one member, his

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possession is not adverse to the others till he does an overt act repudiating the title of the other or some acts of exclusive ownership which can be taken as notice to the others of such claim. (*Ayling and Odgers, JJ.*) RAJAGOPALA IYENGAR *v.* SOUNDRA RAJA IYENGAR. 45 M. L. J. 476 = (1923) M. W. N. 636 = 1924 Mad. 113.

———*Partition—Partial partition—Presumption—Rebuttal—Evidence—Ambiguous statements of members in prior litigation—Effect of.*

There is no doubt a presumption that where there is a partition in a family, there is a total partition and not merely a partial partition; but this is a presumption which can be rebutted and the circumstances in each case will show how much importance is to be attached to the presumption and what amount of evidence would be necessary to rebut it. Where a partition was effected between a father and his sons for a special reason, namely, that his sons by his first wife were not getting on well with him and his second wife, there is no separation as between the father and his sons by his second wife especially when the latter were minors at the time. The recital in the partition that there was a division into six shares of the family properties was only made for the purpose of fixing and ascertaining the shares of the outgoing co-parceners and did not effect a severance between the father and his sons by his second wife. An incorrect recital in a suit filed by members of a Hindu family against strangers that they were divided does not amount to a declaration of intention to divide. 35 A. 80; 43 C. 1031 Rel. (*Phillips and Devadoss, JJ.*) CHELASANI ATCHAMMA *v.* CHELASANI VENKATASUBBAYYA. 16 L. W. 268 = (1922) M. W. N. 487 = 1922 Mad. 423.

———*Partition—Partial partition—Father—Separation of, leaving son, joint with the other members.*

It is competent to a son to become separated to leave his own father and his own son as members of a joint Hindu family. *Held*, that the object of the partition deed in question was to cut off the son who was a profligate, leaving the father and grandson joint. 1 M. H. C. R. 77, Foll. *Per Seshagiri Aiyar, J.*—There is no rule of Hindu Law, that one co-parcener cannot separate from the joint family without at the same time disrupting the joint family. (*Oldfield, Seshagiri Aiyar and Bakewell, JJ.*) RAJAGOPALA AIYANGAR *v.* SINGARAVELU THEVAN. (1919) M. W. N. 800 = 53 I. C. 590 = 10 L. W. 438.

———*Partition—Partial partition—Separation of one member—Effect of.*

Where one member of a joint family relinquishes his share or separates himself from the family the others might continue to remain undivided as before. 25 Mad. 149; 30 Cal. 725 : 32 All. 415, Ref. (*Ayling and Seshagiri Aiyar, JJ.*) KAVERAMMA *v.* VISHNU KANKULLAYYA. 49 I. C. 263.

———*Partition—Partial partition—Award.*

A partial partition made by arbitrators of joint Hindu family properties if accepted will be binding on the parties. (*Wallis, C. J. and Spencer, J.*) KUPPUSWAMY CHETTY *v.* KUSALA RAMIAH. (1918) M. W. N. 683 = 8 L. W. 551 = 49 I. C. 89 = 24 M. L. T. 424.

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———*Partition—Partial partition—Partition-deed—Construction of some items of property not divided—Effect of.*

If a deed of partition states that properties mentioned in it are divided, without mentioning the outstanding due to the family, the family becomes divided even in respect of the outstanding.

Per Wallis, C. J.—A document dividing a particular item of property does not give rise to a presumption that there is a division in status. To lead to such an inference, there must be something more in the document.

Per Seshagiri Aiyar, J.—Where an intention to separate is expressed and a partition is effected, not specifically dealing with some items of property the status of jointness does not continue in respect of the property not divided. (*Wallis, C. J. and Seshagiri Aiyar J.*) SUBBA REDDI *v.* ALAGAMUMAL. 34 M. L. J. 596 = 47 I. C. 552 = 8 L. W. 84.

———*Partition—Partial partition—Suit for.*

Plaintiff, an alienee, from an undivided Hindu co-parcener, who was entitled to a fourth of the joint family properties sued the other members of the joint family for partition and obtained a decree for possession, of certain specific properties including the suit properties. While executing the decree for possession, the plaintiff was obstructed by the defendant, who had, prior to the plaintiff's partition suit purchased the suit properties in execution of a decree against the other co-parceners. Plff. thereupon sued the deft. for a fourth share of the properties in his hands, reserving his right to sue for a share of the other items in the hands of other persons; *Held*, plff.'s suit cannot stand being one for partial partition. 26 M. L. J. 576; 13 Mad. 275 Ref. (*Wallis, C. J. and Coutts-Trotter, J.*) SUNDARESA IYER *v.* KRISHNAMURTHI IYER. 31 M. L. J. 317 = (1916) 2 M. W. N. 156 = 35 I. C. 677 = 4 L. W. 238.

———*Partition—Partial partition—Presumption.*

When a partition has been proved, it is presumed to be complete both as regards the property and the members. The presumption may be rebutted without proof *aliunde*, by the terms of the partition-deed, or a decree for partition and in the absence of written evidence of the separation by the nature and mode of separation and circumstances attending it. (*Napier and Srinivasa Iyengar, JJ.*) RANGASWAMI NAIDU *v.* SUNDARARAJALU NAIDU. 35 I. C. 52 = 31 M. L. J. 472.

———*Partition—Partial partition—Presumption.*

Where a partition between the father and son recited that they had lived hitherto as members of a joint family, that owing to difference among females it had become necessary to effect a partition and that therefore they effected a partition and the partition-deed included expressly all the joint properties except the outstandings which were considerable and not mentioned in the deed: *Held*, on the construction of the document, that the father and son became divided in status and the status of co-parcenary ceased to exist even with regard to outstandings dealt with by the

partition-deed. Per *Chief Justice.*—Mere execution of a document by co-parceners dividing a particular item of property is not enough to raise a presumption that they intended to become divided in status. If such a presumption is to be raised there must be something else in the document to raise it. Per *Seshagiri Aiyar, J.*—When once a partition is made, the presumption is that it effected a complete severance of interest. 32 Mad. 191 ; 35 Bom. 293, Foll. (*Wallis, C. J. and Seshagiri Aiyar, J.*) SUBBA REDDI *v.* ALAGAMMAL.
31 I. C. 674=18 M. L. T. 545.
[The same case is again reported in 47 I. C. 552.].

———*Partition—Partial partition—Presumption—Certain properties left quiet—Whether co-parcenary detained in those properties.*

When there is a partition in a joint Hindu family the presumption is that it is complete partition in status and of all the properties. If certain properties were left undivided there is no presumption that the co-parcenary right is retained in those properties. (*Sankaran Nair and Tyabji, JJ.*) SUNDARAMMA *v.* KAMAKOTIAH.
26 I. C. 514.

———*Partition—Partial partition—One member separating—Presumption.*

Where one co-parcener separates from the rest, there is no presumption that the latter remain united. (*Miller and Tyabji, JJ.*) GADIAN CHETTIAR *v.* GADIAN CHETTIAR.
26 I. C. 43=1 L. W. 799.

———*Partition—Partial partition—Father and minor son—Two other sons by first wife—Status after partition.*

When by a partition-deed a father and his minor son by his second wife were to enjoy certain immoveable properties and certain other properties were to be enjoyed by his two other sons by the first wife, the former still constituted a joint family and in a sale by the father, the interest of the minor son would pass. (*Miller and Tyabji, JJ.*) SINGA IYER *v.* VENKATARAMANA IYER.
(1913) M. W. N. 1016=23 I. C. 6=14 M. L. T. 555.

———*Partition—Partial partition—Suit for.*

A suit by a purchaser of a portion of the rights of one of the co-parceners for partition and allotment to him of that portion cannot be dismissed on the mere ground that the plaintiff had not included all the properties of the family. The defendants can only claim a general partition. The equities in their favour must be worked out. The rule applicable is that governing tenants-in-common and not that regarding partition between members *inter se.* 24 Bom. 128 ; 13 Mad. 275 ; 20 Mad. 243, Expl. (*Benson and Sundara Iyer, JJ.*) SUBBA RAO *v.* ANANTANARYANA IYER.
11 M. L. T. 393=14 I. C. 524=23 M. L. J. 64.

———*Partition—Partial partition.*

An alienee of the share of a member of a joint Hindu family cannot demand partial partition of the family property against the other members. (*Abdur Rahim, J.*) PADALA CHEKKYA *v.* VETHAGIRI SARUVUDU GARU.
12 I. C. 408=(1911) 2 M. W. N. 382.

———*Partition—Partial partition—Branches—Effect.*

A partition between branches of an undivided family in the absence of provision for enjoyment by the individual members of each branch does not effect severance among them *inter se.* 30 Cal. 725 ; 31 Mad. 482 Cons. (*Munro and Abdur Rahim, JJ.*) RAJARATNA SAMI *v.* ANJI LATCHI.
10 I. C. 103=10 M. L. T. 529.

———*Partition—Partial partition—Suit for.*

Though a suit for partial partition does not lie the court may decide such a suit if the deft. is willing that the rights of the parties in respect of the property be decided in that suit. (*Benson and Sundara Aiyar, JJ.*) BURAGAPALLI SRIRAMULU *v.* NANDIGAM SUBBARAYALU.
10 I. C. 57=10 M. L. T. 313.

———*Partition—Partial partition—Suit—Alienee from some co-parceners suing alienee from others.*

A suit by an alienee from some co-parceners for his possession of the shares of his alienors against an alienee from the remaining co-parceners is a suit for partial partition and is sustainable. (*Mittra, A. J. C.*) AMRITRAO *v.* GOVIND.
21 I. C. 590=9 N. L. R. 145.

———*Partition—Partial partition—Separation of one member—Presumption.*

Where one member of a joint Hindu family separates the presumption of jointness as regards the remaining members is destroyed and an agreement amongst the remaining members of the family to remain united or to re-unite must be proved like any other fact. 30 Cal. 725 Ref. (*Lindsay, J. C.*) MAHABIR SINGH *v.* SANT BAKSH.
7 O. L. J. 13=55 I. C. 495=2 U. P. L. R. (J. C.) 29.

———*Partition—Partial partition—Separation of one member—Jointness of remaining ones—Burden of proof.*

Under Hindu Law when one member of a joint family separates, the presumption is that there is a complete partition between all members and the person who alleges that the remaining members remained joint after separation must prove that fact. (*Lindsay, J. C.*) SURAJPAL SINGH *v.* GAJRAJ SINGH.
26 I. C. 600=1 O. L. J. 698.

———*Partition—Partial partition—Presumption.*

A separation by one co-parcener raises no presumption that the others remain united. 30 O. C. 725; 3 Cal. 315 ; 9 Cal. 237 ; 18 All. 90 Foll. (*Kanhaiya Lal, A. J. C.*) MUSSAMMAT MENDANA *v.* JAGANNATH BAKHSH.
25 I. C. 689=17 O. C. 235.

———*Partition—Partial partition—Presumption.*

There is no presumption of continuance of jointness when at the time of the separation of one member the other members have received their shares too. (*Evans, J. C.*) RAMADHAR *v.* SHEO NARAIN.
13 I. C. 717.

———*Partition—Partial partition—Effect of.*

Separation by one member does not effect a severance as between all. Mere specification of

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shares does not amount to severance. 30 Cal. 725 (P. C.) Rel on. 8 W. R. I (P. C.); 21 W. R. 214 Ref. to. (*Roe and Coutts, JJ.*) RAMESWAR MISSER *v.* SURESHWAR MISSER. 46 I. C. 252.

———*—Partition—Partial partition—Effect of—Possession of undivided property by one member—Right of others.*

Where there has been only a partial partition of the family property the possession of one member of the family, of the undivided properties continues to be the possession of the other members, though they may be divided, till some event happens which renders his possession exclusive. (*Chapman and Atkinson, JJ.*) JAGDAMB LAL *v.* BIKU LAL. 40 I. C. 115.

———*Partition—Partial partition—Burden of proof.*

In a suit for partition when it is clear that there has been a partial partition, the burden of proof is on the plaintiff to show the specific items, of which he claims partition. (*Sharfuddin and Roe, JJ.*) SINGHESWAR MISSIR *v.* RAMESHWAR JHA. 34 I. C. 466.

———*Partition—Partial partition—Effect of.*

A joint family can effect partition of part only of the property and remain united with respect to the remainder. 18 Mad. 418; 18 Bom. 611, Rel. 32 Mad. 191; 19 M. L. J. 94, Dist. (*Leggatt, A. J. C.*) GOKAL DAS *v.* CHANDI BAI. 10 I. C. 967=4 S. L. R. 225.

Partition—Provision.

———*Partition—Provision—Marriage expenses of co-parcener.*

The rule of Hindu Law authorising the making of provision at partition for subsequent marriages applies to the brothers who are parties to the division and does not extend to persons who are not in the same degree of relationship as those who have been married at the family expense. 38 Mad. 556; 40 Mad. 632 and 31 Bom. 54 Ref. (*Schwabe, C. J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadoss, JJ.*) YERUKOLA *v.* YERUKOLA. 45 Mad. 648=42 M. L. J. 507=30 M. L. T. 279 (H. C.)=15 L. W. 595=(1922) M. W. N. 215=1922 Mad. 150 (F. B.)

———*Partition—Provision—Divesting estate.*

A clause in a partition deed that if a particular event shall happen, *e.g.*, default in making certain payments, the interest of the defaulter shall pass to another person, is not repugnant to any principle of Hindu Law. (*Oldfield and Seshagiri Aiyar, JJ.*) KRISHNASWAMY AIYAR *v.* APPAVIER. 39 M. L. J. 498=(1920) M. W. N. 691=60 I. C. 802=28 M. L. T. 430=12 L. W. 519.

———*Partition — Provision for marriage—Co-parcener—Provision for expenses—Expenses subsequent to suit but before decree—Decree in partition suit—Effect.*

An unmarried co-parcener cannot make an anticipatory provision at partition for the expenses of his future marriage. 38 Mad. 556.

HINDU LAW—Partition—Re-opening of.

Ref. Where the expenses of marriage of a co-parcener were incurred after the institution of a partition suit but before the decree of the court of first instance. *Held*, that the joint family breaks only by the decree and that the expenses should be credited to him in the account to be taken in the suit. (*Sankaran Nair and Oldfield, JJ.*) NARAYANA ANNAVI *v.* RAMALINGA ANNAVI. 36 I. C. 428=39 Mad. 587.

———*Partition — Provision for expenses — Marriage.*

In a partition decree provision can be made for marriage expenses of the unmarried members of the same degree of relationship as those married at the expense of the family. 38 Mad. 556; 31 Bom. 54 Foll. (*Wallis, C. J. and Seshagiri Iyer, J.*) KARUTHURI GOPALAN *v.* KARITHURI VENKATARAGHAVALU. 40 Mad. 632=31 I. C. 574=29 M. L. J. 710.

Partition—Re-opening of.

———*Partition—Re-opening of—Father—Powers of—Family arrangement—Document styled a will—Father's power to effect a partition—Assent of sons—Acting of the parties—Mutation of names—Reservation of right to cancel—Construction.*

It is not competent to the father in a joint Hindu family to make a division of ancestral property by will amongst his sons, except with their consent. The father and managing member of a joint Hindu family consisting of himself and his three sons, divided substantially the whole of the joint family property between his three sons and his wife, reserving nothing to himself, and put them in possession of their respective shares. Two months later, the father executed a document styled a Will, in which he stated that he had made the division as aforesaid and the document ended with this clause: "If I at any time come back from pilgrimages and find mismanagement or character of any one bad, that I shall have power to cancel this Will which shall be enforced from the date of its execution." In pursuance of this arrangement mutation of names was effected and suits for rent brought by the sons severally in their own names. The division was unequal in that the eldest son was given a larger share than the two others. The arrangement was acted on for 10 years, after which period the younger sons sued for partition. *Held*, that though described as a Will, the document intended to take effect in *praesenti* and not from the death of the testator; that it embodied a family arrangement contemporaneously made and acted upon by all the parties for 10 years; that the sons were also adults, representing their respective branches of the family, accepted the partition and such acceptance not only bound them but also their sons; and that the last clause as to the cancellation being merely put in as a threat to keep the sons in good behaviour could not have been enforced specifically or at all, and did not prevent the partition from taking in effect in *praesenti*. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEODAN SINGH. 35 All. 337=40 I. A. 161=17 C. W. N. 949=11 A. L. J. 698=14 M. L. T. 11=18 C. L. J. 57=25 M. L. J 188=(1913) M. W. N. 515=19 I. C. 826=15 Bom. L, R. 652 (P. C.).

HINDU LAW—Partition—Re-opening of.

———*Partition—Re-opening of—Mistake.*

Where parties arrive at a partition either by agreement or by decree there is an implied and mutual right of indemnity in respect of any paramount claim by third parties which throws the burden of the loss on one of the parties unfairly and in a manner not contemplated by them. If the original decision is made by a common mistake it can be set right. (*Piggott and Walsh, JJ.*) GANESH LAL *v.* BABU LAL.
40 All. 374=45 I. C. 4=16 A. L. J. 339.

———*Partition—Re-opening of—Mistake.*

Where parties arrive at a partition either by agreement or by decree, there is an implied and mutual right of indemnity in respect of any paramount claim by third parties which throws the burden of the loss on one of the parties unfairly and in a manner not contemplated by them. If the original decision is made by a common mistake it can be set right *pro tanto*. 40 All. 374; 45 I. C. 7. (*Richardson and Beachcroft, JJ.*) KHETRA MOHAN KUNDU *v.* JOGENDRA CHANDRA KUNDU.
45 I. C. 7.

———*Partition—Re-opening of—Family arrangements.*

Principles applicable to family arrangements are applicable to partition among members of joint Hindu family and they should not be rightly reopened. (*Coutts-Trotter and Srinivasa Iyengar, JJ.*) YEECHURI RAMAMURTHY *v.* YEECHURI RAMMAMA.
30 M. L. J. 308=33 I. C. 961=3 L. W. 322.

———*Partition—Re-opening of—Error of law—Fraud.*

A partition which took place more than 50 years ago and acted on by the members of the family cannot be reopened on the ground that one of the parties was allotted a larger share under a mistaken view of the law. (*Coutts and Sultan Ahmed, JJ.*) DAL BHAJAN SINGH *v.* KARIMAN SINGH.
57 I. C. 413=1 P. L. T. 465.

Partition—Re-union.

———*Partition—Re-union—Presumption.*

There was a partition of joint family property among the members but two of them subsequently lived together. One of them sued as survivor of the other on a bond executed jointly to them both, *Held*, that the presumption was that the whole family became separate. Mere living together would not constitute them a joint Hindu family and the bare fact of a document executed to them both without specification of the share of each was insufficient to show that they constituted a joint family allegation. (*Karamat Hussain and Tudball, JJ.*) NAND KISHORE *v.* BHORA NATHRAM.
14 I. C. 237.

———*Partition—Re-union—Question of law.*

The question of the re-union of a Hindu family and the facts relevant to prove such re-union is a matter of law. (*Wilberforce, J.*). NARAINDAS *v.* MAHNGA RAM.
59 I. C. 706=45 P. W. R. 1921.

———*Partition—Re-union — Onus — Pleadings—Contradictory statements.*

The onus of establishing a re-union after partition lies on the person setting it up. (*Robertson and Beadon, JJ.*) RAM DIWAYA RAM *v.* MILKHIE RAM.
8 P. L. R. 1913=18 I. C. 553=220 P. W. R. 1913.

HINDU LAW—Partition—Right to.

———*Partition—Re-union—Shares of members.*

Per Phillips, J.—In re-union the members are re-united to their original joint status and on a subsequent partition their shares are the same as they would be at the original partition irrespective of the capital contributed by each co-parcener. (*Phillips and Krishnan, JJ.*) KODALI KRISHNAYYA *v.* GURAVAYYA.
14 L. W. 668=41 M.L.J. 503=70 I.C. 146=(1921) M.W.N. 742.

———*Partition—Re-union—Proof of.*

Mere living together in commensality and incurring marriage expenses indiscriminately after partition cannot constitute re-union. 30 Cal. 231 Foll. Nor does the fact of making acquisitions jointly or the throwing in of an extra share by the eldest member of the family constitute re-union. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) REDDI *v.* REDDI.
8 L. W. 400=47 I. C. 716=(1918) M. W. N. 680.

———*Partition—Re-union—Evidence.*

Where after a partition two brothers lived together, traded together and executed joint bonds and after the death of one the other paid the debts of the deceased. *Held*, it was not obligatory on the part of the court to infer re-union. (*Sadasiva Aiyar and Napier, JJ.*) KANNU CHETTY *v.* AMIRTHAMMAL.
26 I. C. 418=1 L. W. 877.

———*Partition—Re-union—Effect.*

After re-union the subsequent interest of the members in the re-united family would not be the same as if this had continued undivided. It would depend on the properties brought into the common stock. (*Sankaran Nair, J.*) ALAMELUMANGATHAYARAMMAL *v.* NUMBERUMAL CHETTY.
23 I. C. 824=15 M. L. T. 352.

———*Partition—Re-union—Essentials of.*

Mere joint living and trading is not sufficient to constitute re-union. An intention to alter the status must be established. 8 W. R. P. C. 1; 21 W. R. 214 (P. C.); 30 Cal. 738 (P. C.), Ref. to. (*Roe and Coutts, JJ.*) NAND LAL SINGH *v.* BHAGWATH KOER.
46 I. C. 529=5 P. L. W. 127.

Partition—Right to.

———*Partition—Right to—Defence to suit.*

In a suit for partition by an adult son against his father in a joint Hindu family the fact that the father might have other children in future is no ground for refusing a decree to the plaintiff. (*Viscount Haldane.*) KAWAL NAIN *v.* BUDH SINGH.
39 All. 496=40 I. C. 286=15 A. L. J. 581=2 Pat. L. W. 57=21 C. W. N. 986=33 M. L. J. 42=19 Bom. L. R. 642=26 C. L. J. 101=(1917) M. W. N. 514=6 L. W. 330=44 I. A. 156 (P. C.).
[On appeal from 19 I. C. 430.]

———*Partition—Right to—Babuana and Sohag grants for maintenance.*

The right of Mitakshara co-parceners to have their ancestral property partitioned is unquestionable unless the property is held under a grant or is subject to a custom which expressly or impliedly prohibited any partition of the property which would have the effect of defeating the object of the grant or custom. Babuana and Sohag grants given to junior members of the family of Raj of

HINDU LAW—Partition—Right to.

Darbhanga for maintenance, descend, not to one male heir only but to all the existing male heirs in the male line of the grantees as co-parceners. Consequently the properties are subject to partition at the instance of such male heirs though on default of male issue the properties will revert to the Raj. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. 42 Cal. 582=25 I. C. 417=41 I. A. 275=18 C. W N. 1249=27 M. L. J. 373=16 M. L. T. 382=1 L. W. 863=(1914) M. W. N. 807=12 A. L. J. 1217=21 C. L. J. 9=17 Bom. L. R. 18 (P. C.). [On appeal from 3 I. C. 207.]

———*Partition—Right to.*

Insanity operates as a claim for partition. (*Prideaux, A. J. C.*) VITHOBA *v.* WAMAN. 18 N. L. R. 80=1922 N. 161.

———*Partition—Right to—Presumption.*

There is a strong presumption that persons related to Pathidari body through males are themselves pathidars. (*Baillie, S. M. and Tweedy, J. M.*) RAGHUNATHA KUER *v.* COURT OF WARDS, SAIFABAD. 26 I. C. 683=1 O. L. J. 587.

———*Partition—Right to—Grandson.*

Under the Hindu Law grandsons are entitled to bring a suit for partition against their grandfather. 5 A. 430; 38 Cal. 111 Foll.; 16 Bom. 29 not Foll. (*Das and Adami, JJ.*) DIGAMBAR MAHTON *v.* DANRAJ MAHTON. 1 P. 361=3 Pat L. T. 238=1922 P. 96.

———*Partition—Right to—Lunatic.*

Per *Crouch, A. J. C.*—A lunatic co-parcener whose lunacy was not congenital but subsequently sued for joint family property and was held to be entitled to his share there being nothing against it in Mitakshara. Per *Pratt, J. C.*—The disqualifications must apply at the time of the birth. Holding otherwise is divestment of right, which is contrary to Hindu Law. (*Pratt, J.C., Fawcett and Crouch, A. J. Cs.*) HOTEHAND GULABRAI *v.* MANCHANMAL GULABRAI. 29 I. C. 42=8 S. L. R. 279.

Partition—Shares.

———*Partition—Shares—Adopted son.*

As regards the distribution of family property by partition an adopted son stands exactly in the same position as he would stand if he were a naturally born son of an adoptive father subject to the qualification that if there be a competition between an adopted son and a subsequently born legitimate son of the same father, the adopted son takes a less share than he would take if he had been a naturally born legitimate son. In a suit for partition of the family property between the adopted son of one brother and the natural son of the other that the former was entitled to share equally with the latter. 4 Cal. 425, Overruled; 9 W.R. 423; 8 C.L.R. 57; 7 Mad. 253; 8 I. A. 229 Ref. (*Sir John Edge.*) NAGINDAS BHAGWANDAS *v.* BACHOO HURKISSONDAS. 40 Bom. 270=30 M.L.J. 193=19 M.L.T. 193=(1916) 1 M.W.N. 258=3 L, W. 259=14 A.L.J. 185=20 C.W.N. 702=23 C.L.J. 395=18 Bom. L.R. 172=32 I.C. 403=43 I. A. 56. (P. C.)

HINDU LAW—Partition—Subject-matter.

———*Partition—Shares—Shares taken by members separated before partition.*

The plff.'s branch of the family sued the other two branches to recover one-third share by partition. The plff. had two brothers, one of whom had separated from the whole family in 1892 on receipt of one-twelfth share. *Held*, that the plff.'s share in the property was one-third, for partition must be made *rebus sic stantibus* as on the date of suit. 5 Mad. 362 not Foll. (*Batchelor and Hayward, JJ.*) PRANJIVAN DAS *v.* ICHARAM. 39 Bom. 734=30 I. C. 918=17 Bom. L. R. 712.

———*Partition—Shares—Jyeshtabhagam.*

The award of *jyeshtabhagam* is not authorised by Hindu Law as administered in this Presidency. 39 M. L. J. 382 and 8 L. W. 400 Foll. (*Schwabe, C. J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadass, JJ.*) YERUKOLA *v.* YERUKOLA. 45 Mad. 648=42 M.L.J. 507=30 M. L. T. 279 (H. C.)=15 L. W. 595=(1922) M.W.N. 215=1922 Mad. 150 (F. B.).

———*Partition—Shares—Share of eldest brother.*

The old practice of giving the eldest brother and manager a *jyeshtabhagam* is now obsolete. (*Wallis, C. J. and Krishnan, J.*) RAJANGAM AIYAR *v.* RAJANGAM AIYAR. 39 M. L. J. 382=57 I. C. 18=12 L. W. 435.

———*Partition—Shares—Eldest son.*

The claim of the eldest son under the Hindu Law to *jyeshtabhagam* (extra share) has long become obsolete and an allotment of such extra share will not bind the minors. (*Abdur Rahim and Seshagiri Iyer, JJ.*) VENKATA REDDI *v.* KUPPA REDDI. (1918) M.W.N. 680=47 I. C. 716=8 L. W. 400.

———*Partition—Shares—Sons, share of, whether included in share of father.*

In a partition among the members of a joint Hindu family each member represents his sons, if any, and the rule applies also to where the sons are minors. (*Daniels and Wazir Hasan, A. J. Cs.*) RAM BAHADUR SINGH *v.* NIRBHAI SINGH. 59 I. C. 564=23 O. C. 339.

Partition—Subject-matter.

———*Partition—Joint business—Dissolution—Cause of action.*

Where a separation is effected between brothers but a business is carried on by them, the business becomes an ordinary partnership subject to the Partnership Act. On the death of one brother the partnership is dissolved and a right to an accounting arises. If, however, on the brother's death the widow of the deceased brother is admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation can apply. The fact that the brother's share still continued to be dealt with in the books is no evidence of a partnership with his widow. (*Lord Buckmaster.*) MT. JATTI *v.* BANWARI LAL. 18 L. W. 273=45 M. L. J. 355=(1923) M. W. N. 687=25 Bom. L. R. 1256=4 Lah. 350=50 I. A. 192=21 A. L. J. 582=33 M. L. T. 283 (P. C.)=L. R. 4 (P. C.) 135=1923 P. C. 136 (P. C.).

———*Partition—Subject-matter—Religious office and perquisites—Birt Jigmani—Mode of partition.*

Rights in Birt Jigmani are heritable and some times transferable. Where the Birt Jigmani consists of offerings given to a pragwal by pilgrims coming to bathe in the Ganges, it is impossible to effect a partition of the right by allotting clients to one party or the other but only a division of books in which pilgrims enter their names can be made. In the case of things which are incapable of division, *e. g.*, flag, it will be open to each party to use a similar flag. 43 A. 35 Ref. (*Ryves and Daniels, JJ.*) RAMACHANDER *v.* CHHABBU LAL. 45 A. 445= 21 A. L. J. 358=L. R. 4 A. 200= 1923 A. 350.

———*Partition—Subject-matter of—Occupancy holding—Agra Tenancy Act, S. 32.*

A suit for partition of joint family property is not bad because it includes an occupancy holding The court need not sub-divide the holding against the provisions of the Tenancy Act, but it can allot the occupancy holding to one party or can leave the same undivided with a declaration that the parties are jointly entitled thereto. (*Richards, C. J. and Tudball, J.*) DWARKA *v.* RAMPAT. 36 A. 461=24 I. C. 235=12 A. L. J. 696.

———*Partition — Subject-matter — Property set apart for trust acquired by one member—Claim of the other.*

Where a Hindu father set apart some family property for a religious purpose and the same was bought by one of his sons from the trustees, the other son cannot claim partition of the same in the hands of his brother. (*Shah, A. C. J. and Crump, J.*) JAMNADAS KASHIDAS *v.* VALLABHDAS KASHIDAS. 25 Bom. L. R. 1340=1924 Bom. 239.

———*Partition — Subject-matter — Common property set apart at prior partition—Subsequent suit for partition—Maintainability of.*

It is an unabrogated rule of Hindu law that a common way or a road of ingress and egress reserved as common property between the various sharers at a previous partition cannot be the subject of a partition. The expression "common way" referred to in Mitakshara Ch. I. S. IV. paras. 16 and 25 is not confined to "common ways" existing prior to partition and is applicable to common passages created for the first time and reserved by agreement between the parties at the time of the partition. 36 B. 379, 382 Ref. *Per Crump, J.*—Where there has been a complete partition under a decree of court and under that decree a passage is reserved for common use between the sharers, a fresh suit for partition of the common passage does not lie. (*Shah, A. C. J. and Crump, J.*) SHANTARAM BALKRISHNA *v.* WAMAN GOPAL WADEKAR. 47 Bom. 389= 24 Bom. L. R. 1029=1923 B. 85.

———*Partition — Subject-matter — Well — Right of way.*

Both according to the *mitakshara and mayukha* rights of ways and rights to well and water belonging to a joint family are indivisible. If there is no evidence that at a partition of the family estate, such rights were divided, the law will hold that they continued to retain their indivisible

character having regard to the nature of the rights in question. (*Chandavarkar and Batchelor, JJ.*) NATHUBAI *v.* BAI HANSGAVRI. 36 Bom. 379= 15 I. C. 818=14 Bom. L. R. 418.

———*Partition — Subject-matter — Division in status.*

Property given by a grandfather to his grandsons out of affection does not vest in them as joint tenants with rights of survivorship. The donees take as tenants-in-common. (*Mookerjee and Cuming, JJ.*) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. 50 Cal. 370= 37 C. L. J. 233=1923 Cal. 485.

———*Partition—Subject-matter.*

The liability of a joint family to individual members is not assets or property to be brought into hotchpot at division. Observations of *Sadasiva Aiyar, J.* in 34 M. L. J. 32 at 38 Ref. (*Spencer and Ramesam, JJ.*) SUBROYA BHANDARY *v.* JANARDANA BHANDARY. 41 M. L. J. 370= 62 I. C. 852=14 L. W. 534.

———*Partition—Subject-matter — Charily by joint family—Agreement for management—Intention.*

Where on division of the joint family properties the members agreed that the charities should be managed by the head of the family in each for the time being; *Held* that the intention of the parties was that the management should be in the hands of the male heads and not in the hands of the females. (*Wallis C. J. and Srinivasa Aiyangar, J.*) KRISHNASWAMI PILLAI *v.* MOOKAYI AMMAL. 31 I. C. 35.

———*Partition — Subject-matter — Partnership-with stranger.*

A co-parcener cannot sue for dissolution of partnership of a firm of which the manager as representing the family is a partner. He can call on the manager to get on the assets and if he refuses to do so enforce partition. (*Wallis C. J. and Bakewell and Kumaraswami Sastri, JJ.*) GANGAYYA *v.* VENKATARAMIAH. 41 Mad. 454=34 M. L. J. 271= 6 L. W. 708=22 M. L. T. 527= 43 I. C. 9=(1917) M. W. N. 805.

———*Partition—Subject matter—Family temple.*

Under Hindu Law a place of worship such as a private temple of a family cannot be divided by metes and bound so long as some of the family members want its continuance. 8 W. R. 193, Ref. A common family temple has become the subject of partition by having the right of management enjoyed in turns by each member, all the members of the family are entitled to perform ordinary worship in the temple at any time though it may not be their turn. 17 Bom. 271 at 288 Ref. Owners of a family temple under Hindu Law are in the same position as the holders of an hereditary office and the only way of subjecting such property to partition is by means of the system of management of each member in rotation. 6 Bom. 298; 34 Mad. 470; 27 Mad. 192 Ref. (*Pratt, J, C. and Boyd, A. J. C.*) SAKHAWATRAI *v.* PARTABRAI, 34 I. C. 909=9 S. L. R. 209.

HINDU LAW—Partition—Subject-matter.

———*Partition—Subject-matter of—Vritti.*

Per *Crouch, A. J. C.*—Yajman Vritti as a general rule impartible and inalienable on grounds of public policy and because it includes a right of personal service. But by custom a distribution of duties by a system of rotation and relinquishment of rights by one in favour of other members has been recognised as permissible. Such custom must be proved. 23 Bom. 131 Foll. 1 S. S. Sel D. 353 ; 2 S. S. Sel D. 413 overruled ; 6 Bom. 298 ; 6 B. H C. R. 250 ; 22 W. R. 437 Dist. Per *Fawcett, A.J.C.*—The Courts should lean against the partibility and alienability of Vrittis (1) because it is uncommon with Hindu Law ; (2) though from the point of view of the Brahmin it may be merely money, from the point of view of *Yajman* it connotes priestly service ; (3) because the process of partition might go with each generation frittering away the income and rendering the service wholly ineffective. 20 Bom. 495, Appr. Per *Pratt C. J.*—The object of the rule of impartibility is to maintain the dignity of the office. Once that has been encroached upon the reason of the rule ceases. (*Pratt, J. C., Crouch and Fawcett, A. J. Cs.*) MUGHIRMAL *v.* VITHALRAM.
13 I. C. 225=5 S. L. R. 107.

Partition—Suit for.

———*Partition—Suit for—Decree in suit by one member—Subsequent suit—Bar.*

If a member of a joint Hindu family sues and obtains a decree for partition, a subsequent suit by another sharer who was defendant in the former suit and was allotted a share is barred by *res judicata.* (*Lord Moulton.*) NALINI KANTA LAHINI *v.* SAMAMOYA DEBYA.
1 L. W. 607=27 M. L. J. 76=16 M. L. T. 544=
(1914) M. W. N 948=21 C. L. J. 23=
24 I. C. 294=17 Bom. L. R. 1=
19 C. W. N. 531 (P. C.).

———*Partition—Suit for—Omission of small item—Effect—Amendment.*

In a suit for partition of the whole family property the plaintiff need not file with the plaint a complete and exhaustive list of all properties. If any defendant wishes to raise the plea that any part of the joint family property has been excluded, he must specify such properties and show that they belong to the family and have been wrongly excluded. A suit should not be dismissed on such a technical ground but to leave to amend should be given. (*Mears, C. J. and Sulaiman, J.*) AMIR CHAND *v.* LAKHMI CHAND. 2 U. P. L. R.(All.) 290=58 I. C. 275=
18 A. L. J. 869.

———*Partition—Suit for—Occupancy holding—Agra Tenancy Act, S. 32.*

A suit for partition of joint family property is not bad because it includes an occupancy holding. The court need not sub-divide the holding against the provisions of the Tenancy Act, but it can allot the occupancy holding to one party or can leave the same undivided with a declaration that the parties are jointly entitled thereto. (*Richards, C. J. and Tudball, J.*) DWARKA *v.* RAMPAT. 36 All. 461=24 I. C. 235=
12 A. L. J. 696.

HINDU LAW—Partition—Suit for.

———*Partition—Suit for—Parties.*

A widow in possession of properties in lieu of maintenance is not a necessary party to suit for partition. (*Richards, C. J. and Banerji, J.*) SABTA PRASAD *v.* DHARAM KIRTISARAN.
35 All. 107=18 I. C. 609=11 A. L. J. 66.

———*Partition—Suit for—Purchaser from Hindu co-parcener of share in family property.*

Under Hindu Law the purchaser from a Hindu co-parcener of his undivided joint family property can recover the share by partition but cannot recover past profits before the date of the suit. (*Macleod, C. J.*) TRIMBAK GANESH KARAMBARKAR *v.* PANDURANG GHAROJEE.
44 Bom. 621=57 I. C. 582=
22 Bom. L. R. 812.

———*Partition—Suit for—Well—Right of way.*

In the absence of anything to show that on the partition of a joint estate a certain passage was allotted to either one party or the other exclusively, the presumption is that it continued to be joint and undivided even after the partition. This is presumption of Hindu Law and can only be rebutted by clear proof that the passage was not reserved as joint but was divided and allotted to one of the parties exclusively as his share. (*Chandavarkar and Batchelor, JJ.*) NATHUBAI *v.* BAI HANS GAVRI. 36 Bom. 379=
15 I. C. 818=14 Bom. L. R. 418.

———*Partition — Suit for — Subject-matter—Property not included in previous partition suit, if can be partitioned afterwards—Texts.*

The Mitakshara refers to cases where property not partitioned is discovered after the partition in which case it allows a fresh partition. The provision in S. 9, Cl. (1) paras. 1 and 2 are not rules of substantive law and only rules of procedure. (*Woodroffe and Smither, JJ.*) HARIHAR DUTTA TEWARI *v.* BHIM SAMSKAR DUTTA TEWARI.
46 I. C. 226.

———*Partition—Suit for—Joint lessees.*

When permanent lessees in joint possession with other lessees sue for partition of their shares, the latter, *i. e.*, their joint lessees cannot object to the partition on the ground that the permanent leases granted were granted by the lessor in excess of his powers and are therefore liable to be set aside by the lessor's reversioner. (*Chatterjee and Richardson, JJ.*) SALIMULLAH BAHADUR *v.* PROVAT CHANDRA. 43 Cal. 1118=33 I. C. 129=
24 C. L. J. 26.

———*Partition—Suit—Consent decree—Effect.*

A consent decree among some only of the parties is untenable even as regards the consenting parties. (*Mookerjee and Carnduff, JJ.*) BASIR GAJI *v.* GRIJA MATH. 9 I. C. 211=13 C. L. J. 18.

———*Partition—Suit for—Dismissal—Effect of.*

On the dismissal of a suit for partition the members are still joint and can demand partition. (*Chevis and Shadilal, JJ.*) GULAB SHAH *v.* HAVELI SHAH. 87 P. R. 1915=31 I. C. 463=
181 P. W. R. 1915.

———*Partition—Suit for—Mesne profits—Right of co-parcener—Accounts—Manager—Liability of property subject to mortgage.*

HINDU LAW—Partition—Suit for.

A member of a joint Hindu family suing for partition and for the profits on his share is really suing for an account of the profits received by the manager of the portion in his possession so that the proceeds so received by the latter which are also divisible property may be divided and his share therein also given to him. His right to such profits is not as mesne profits received by a person in wrongful possession but as appurtenant to his right in his share of the lands. In a suit for partition by a member of a joint Hindu family, the plaintiff is not ordinarily entitled to claim past mesne profits. He is not entitled to interest on his share of the profits realised by the defendant who was in possession subsequently. The plaintiff is not disentitled to his share of the profits realised by the said defendant from family properties which were subject to mortgages and which were redeemed by the said defendant with family funds. In that case plaintiff is entitled to the profits only from the date of redemption. The defendant is not entitled to interest on the amounts paid by him for redemption. (*Oldfield, Sadasiva Aiyar, Napier and Venkatasubba Rao, JJ.*) T. RAMASAMI AIYAR *v.* T. SUBRAMANIA AIYAR.
46 Mad. 47=43 M. L. J. 406=16 L W 297=1923 Mad. 147.

———*Partition — Suit for—Procedure — Deft. offering to pay the court-fee on his share—Suit to set aside alienation by widow.*

In a suit for recovery of possession of his share of property alienated by a widow, by one reversioner, another reversioner added as deft. cannot be allowed to pay the court-fee and claim a decree for recovery of his share as it virtually converts a suit for recovery of possession into one of the partition. (*Olafield and Bakewell, JJ.*) ADHIKARI VISHNU MURTIAIYA *v.* AUTHAIYA.
47 I. C. 533=35 M L. J. 153.

———*Partition—Suit for—Subject-matter.*

Partition suit need not include all properties situated in different jurisdictions. (*Seshagiri Aiyar, J. and Wallis, C. J.*) MAHALINGAM *v.* NATESAN AIYAR. 3 L. W. 107=32 I. C. 423=(1916) 1 M. W. N. 146.

———*Partition—Suit for—Debt left out of account in partition suit as valueless—Subsequent suit to enforce the debt—Joinder of parties.*

Per *Sadasiva Iyer, J.*—A co-parcener who wishes to partition family properties has only a single cause of action in respect of all the joint properties and therefore no suit lies for partial partition. After partition none of the parties to it holds any of the properties jointly with any other party unless the partition agreement or partition award or decree itself provides for such joint holding or unless there has been accident, mistake or fraud in the non-inclusion of some of the property at the division. In a suit for partition by a son against his father, a mortgagee debt due to the family was left out of account in arriving at the amount decreed to the son for his share as the mortgage was considered to be valueless. *Held*, the son cannot subsequently claim partition of the mortgage deed in a second suit and therefore a subsequent suit to enforce the mortgage by father alone is not bad for non-joinder of parties. *Per Napier, J.*—

HINDU LAW—Partition—Suit for.

A decree in a partition suit only operates as a mutual release of the parties. Any property left undivided for any reason as in a case where it is considered valueless and so not taken into account continues to be joint. Hence the suit to enforce the mortgage left out of account the son is a necessary party and the suit instituted by the father alone should be dismissed for non-joinder. (*Sadasiva Iyer and Napier, JJ.*) KANDUM VENKATASWAMI *v.* BALIGADU.
19 M. L. T. 43=32 I. C. 179=3 L. W. 74.

———*Partition—Suit for—Portions of family properties in foreign territory whether can be included in the partition.*

In a partition suit, the court has no power to order the partition of immoveable property outside British India. But the court should take such properties outside British India, into consideration in adjusting the equities prevailing between the parties. (*Sadasiva Iyer and Spencer, JJ.*) SUBBIYA MUDALIAR *v.* THULASI MUDALIAR. 14 M. L. T. 537=22 I. C. 44=1 L. W. 65=(1914) M. W. N. 16.

———*Partition—Suit for—Defence—Unregistered prior partition.*

Even though there is a partition deed, if such deed was not registered, then the suit for partition will lie. A suit for partition will also lie to enforce a regular registered partition deed, if no completed agreement of partition apart from and previous to the instrument is set up. Even if a state of division is created, the plaintiffs are entitled to sue for actual division. If a partition deed is suppressed, there is breach of contract by one party and the other party is entitled to put an end to it and fall back on his rights prior to the contract. 20 Mad. 19; 16 Mad. 341 Dist. (*Sundara Aiyar and Sadasiva Iyer, JJ.*) KODUNGOTH PURAKKAL AMMALU *v.* KODUNGOTH PURAKKAL MEENAKSI. 16 I. C. 433=12 M. L. T. 301.

———*Partition—Suit for—Claim for partition of property in the hands of stranger—Omission to prove possession by the family within 12 years.*

Where partition was claimed in respect of a certain item of property which had been sold without the document being registered and not proved to have been within 12 years prior to the suit, the title of the transferee must be held to have been perfected by limitation. (*Benson and Sundara Aiyar, JJ.*) SUBRAMANIA REDDI *v.* RAMACHANDRA REDDI.
10 I. C. 498=9 M. L. T. 476.

———*Partition—Suit for—Mesne profits.*

In a suit for partition between one brother and auction-purchaser in a decree against another brother, the auction-purchaser will not get mesne profits unless it is shown that he was obstructed in taking possession of any part of the joint property. (*Kotval, A. J. C.*) RAMANATH *v.* SITARAM.
19 N. L. R. 147=1923 Nag. 288.

———*Partition—Suit for—Defendant's right to share.*

In a partition suit, a defendant has a right to have his share partitioned from the share of the other defendants and this rule is not confined to Hindu co-parceners. (*Macnair, A. J. C.*) ANWAR KHAN *v.* YAKUBKHAN. 61 I. C. 596

HINDU LAW—Partition—Suit for.

———*Partition—Suit for—Prior separation—Effect of.*

When the disruption of the family is proved in a suit the plaintiff has to prove that it took place within twelve years prior to the suit or that during that period was in possession. (*Kanhaiya Lal, J. C.*) AJUDHIA *v.* BADAL. 53 I. C. 928.

———*Partition—Suit for—Parties—Mortgagees.*

To a suit for a joint family property where plaintiff admits his liability for family debts, the impleading of the mortgagees is unnecessary. (*Kanhaiya Lal, A. J. C.*) RAM SAMUGH SINGH *v.* BIKRAMAJIT SINGH. 50 I. C. 876 = 6 O. L. J. 142.

———*Partition—Suit for—Scope of—Parties.*

The object of a suit for partition is to determine the share of the joint family property due to each co-sharer and for that purpose all the libilities of the family should be taken into account. If the liabilities bind the whole family the debts should be distributed at the time of partition. The debts of one member which are personal to him and not binding on the others, must be charged against his share. The alienee from the father is a necessary party to a suit for partition by the son. 16 Bom. 608 Rel. on. The nature of the alienation and the son's liability thereunder may be determined in such suit. (*Lindsay, J. C.*) MAHADEO SINGH *v.* BHAWANI BHIK SINGH. 46 I. C. 281 = 5 O. L. J. 193.

———*Partition—Suit for—Subject-matter—Non-inclusion of some items—Fresh suit.*

Where in a suit for partition certain items held jointly with a stranger were excluded a second suit with respect to them is not barred. (*Lindsay and Rafique, A. J. Cs.*) DEBI SAHAI *v.* GOURI SHANKAR SAHAI. 15 I. C. 214 = 15 O. C. 81.

———*Partition—Suit for—Temporary partition.*

Where the plaintiff in a partition suit asks for temporary partition of his half share, and the court grants his prayer, he is presumed to have relinquished his claim in respect of the remaining half. (*Miller, C. J., Mullick and Bucknill, JJ.*) HARI KRISHNA SEN *v.* UMESH CHANDRA DUTT. 2 P. L. T. 528 = 62 I. C. 962 = 1921 Pat. 209 = 3 U. P. L. R (P) 57 = 6 P. L. J. 373 (F. B.).

———*Partition—Suit for—Death of co-parcener after preliminary decree, effect of—Jurisdiction of court passing final decree.*

A partition action is not ended by a preliminary decree but continues till a final decree is made and the shares to be decreed to the parties are those at the time of the final decree. The court passing the final decree is competent to consider the effect of the death on the shares of the other coparceners. (*Das and Adami, JJ.*) KRISHNALAL JHA *v.* MANDESHWAR JHA. 2 P. L. T. 215 = 59 I. C 872 = 3 U. P. L. R. (P.) 17.

———*Partition—Suit for—Subject-matter.*

The plaintiff in a suit for partition is not bound to include properties held by the family jointly with strangers. Only those properties belonging in common to all the sha ers need be included.

HINDU LAW—Partition—Religious Endowment

(*Miller, C. J. and Imam, J.*) RAMDAYAL MAHTO *v.* UTTIM MAHTO. 46 I. C. 255 = 5 P. L. W. 122

———*Partition—Suit for—Declaration.*

A suit by some members of a Mitakshara joint Hindu family for a declaration of their share in the joint family property without a prayer for partition by metes and bounds is maintainable and not barred by S. 42. 43 I. A. 15, Ref. (*Chamier, C. J. and Sharfuddin, J.*) ASMANSINGH *v.* TULSI SINGH. 1 P. L. W. 335 = 2 P. L. J. 221 = 39 I. C. 173 = 1917 Pat. 131.

———*Partition—Suit for—Duty of Courts.*

Per *Crouch, A. J. C.*—The principle underlying 'partial partition' is that in all suits for partition the court considers not merely the equal rights of the plaintiff but also the legal and equitable rights of all other parties interested, and where a particular part has been alienated, the court will ordinarily allot such part to the alienee and grant him possession, provided this can be done without unfairness to other parties. (*Pratt J. C. and Crouch, A. J. C.*) DULARAM PINIOMAL *v.* BADALDAS JAMIATRAJ. 35 I. C. 478 = 10 S. L. R. 34.

———*Partition—Suit for—Omission to specify some properties—Course to be adopted.*

Where in the plaint in a Hindu family partition suit, some properties are omitted by inadvertance or mistake or fraud, the suit should not be dismissed but the plaint must be allowed to be amended by supplying the omission. 28 Cal. 769 Foll.; 14 Cal. 122 and 35 Cal. 961 Ref. to. (*Atkinson and Jwala Prasad, JJ.*) MUKUNDA LAL *v.* JOGESH CHANDRA. 20 C. W. N. 1276 = 35 I. C. 370 = 1 P. L. J. 393.

———*Partition—Suit for—Subject-matter of.*

A partition suit can include no property wherein each party does not claim an interest. 23 C. L. J. 231; 23 I. C 17. (*Pratt, J. C. and Boyd, A. J. C.*) SAKAWATRAI *v.* PARTABRAI. 34 I. C. 909 = 9 S. L. R. 209.

Perpetuities.

See HINDU LAW
(1) GIFT.
(2) WILL.

Possession.

See HINDU LAW—JOINT FAMILY.

Primogeniture.

See (1) CUSTOM.
(2) HINDU LAW—CUSTOM.

Religious Endowment.

See ALSO HINDU LAW—RELIGIOUS OFFICE.

Religious Endowment—Alienation of Property.

See HINDU LAW,—ALIENATION BY MANAGER OF RELIGIOUS ENDOWMENT.

Dedication.
Idol.
Managment.
Mutt.
Shebait.
Temple.
Trustee.
Trusteeship.

HINDU LAW—Religious Endowment—Dedication.

———*Religious endowment—Dedication—Onus of proof—Head calling himself owner.*

The mere fact that the heads of a religious institution call themselves as owners of the foundation is no evidence that any particular property is the personal property of the Acharya. Any person contending that the property is not a part of the endowment must show that it was acquired by the Acharya with funds belonging exclusively to him or which may be regarded as his official perquisite. The expression "Shri" attached to a particular property in the books of account denotes its sacred or endowed character. (*Mr. Ameer Ali.*) MUSSAMMAT KAMLA LACHMI *v.* MAHANT BASDEO PRASAD. 23 O. C. 171= (1920) M. W. N. 553=13 L. W. 156= 7 O. L. J. 434=2 U. P. L. R. (P. C.) 130= 58 I. C. 900=25 C. W. N. 217= 28 M. L. J. 404 (P. C.).

———*Religious endowment—Dedication—Idol—Shebait permitted to reside in house.*

A provision in a will permitting the Shebait to reside with his family in a part of a house specially put apart for the accommodation of the idols is a perfectly valid and reasonable provision. (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SUNDARA NATH DAS. 24 C. W. N. 1026= 28 M. L. T. 453=61 I C. 323= (1920) M. W. N. 550 (P. C.)

———*Religious endowment—Dedication—Validity of—Benefit to donee's family—Effect of deed.*

By a deed of gift duly executed and registered a Hindu dedicated the whole of his property to a temple. The idol was to take the property and the donor's family who were to be the administrators and managers of the temple were to be remunerated with half the income of the property without any power of alienation. Upon the death ol the managers named in the deed, the Government was to be the manager and the whole net income was to be applied to the expenses of the temple. *Held*, that the deed was a valid endowment of the whole property to the temple and there was nothing improper in ear-marking a certain part of the income (which was limited) to remunerate the managers so long as they should continue. 39 All. 353; 42 I. C. 225 (P. C.) Ref. (*Viscount Haldane.*) JADU NATH SINGH *v.* SITARAMJI. 39 All. 553=21 C. W. N. 953= 22 M. L. T. 52=20 O. C. 200= 26 C. L. J. 309=19 Bom. L. R. 687= (1917) M. W. N. 605=4 O. L. J. 586= 42 I. C. 225=44 I. A. 187 (P. C.) [On Appeal from 1 O. L. J. 204=24 I.C. 72.]

———*Religious endowment—Dedication—Proof of—Performance of worship.*

The performance of the worship in accordance with the rites of sect for whose benefits the endowment is held, is good evidence of dedication. (*Mr. Ameer Ali.*) MOHAN LALJI *v.* TIKAIT SRI GORDHAN LALJI. 35 All. 283=40. I. A. 97=17 C. W. N. 741= 11 A. L. J. 548=17 C. L. J. 612= 15 Bom. L. R. 606=(1913) M. W. N. 536= 19 I. C. 337=14 M. L. T. 27 (P. C.) [On Appeal from 32. All. 461=6 I. C. 77= 7 A. L. J. 430.]

HINDU LAW—Religious Endowment—Dedication.

———*Religious endowment—Dedication — Endowment-deed treated as nullity by the creator.*

A Hindu executed and got registered a deed endowing certain property to charity but he treated it as his own, got his son's name in the Revenue papers, and executed a deed of gift in favour of the son. The son also treated the property as private, and mortgaged it. The income of the property was not devoted to charity: *Held*, that mere execution and registration of endowment deed did not make the property an endowed one, where there was no transfer of ownership from donor to donee. (*Mears, C. J. and Bannerji, J.*) RAM DHAN *v.* PRAG NARAIN. 43 All. 503= 19 A. L. J. 447=62 I. C. 862= 3 U. P. L. R. (All.) 161.

———*Religious endowment — Dedication — Reservation of benefit to donor—Illusory endowment.*

By a deed of endowment so-called the donor purported to dedicate practically the whole of his property to an idol just before his death. He was to be the manager during his life and after him his widow, thereafter his daughter's sons and their descendants. He undertook to effect mutation of names in favour of the idol, to use the income of the endowed property in meeting the expenses of *Puja*, *Rajbhag* and repair of temple and to keep a separate and regular account of the income and expenditure. About 16 months later the donor died and was succeeded by his widow. The donor had never applied for mutation of names and not more than a tenth part of the income had ever been spent upon the purposes of the endowment and no account books showing the income and expenditure were produced. *Held*, that all these circumstances showed that the donor did not really intend to create a religious endowment and that there was no real dedication to the idol. The creditors were allowed to attach property in execution of decree. (*Mears, C-J., Walsh and Bannerji, JJ.*) SRI THAKURJI *v.* SUKHDEO SINGH 42 All. 395= 18 A. L. J. 390=58 I. C. 583= 2 U. P. L. R. (All.) 91 (F. B.)

———*Religious endowment—Dedication—Public purpose.*

Where a will directed the erection of temples, *dharmashala* and a bathing *ghat*, feeding and clothing of the poor who visit the *dharmashala* and free distribution of medicine. *Held*, that the trust created is a public trust. (*Rafique and Piggott, JJ.*) JAI NARAYAN *v.* BANKEY LAL. 58 I. C. 566=17 A. L. J. 957.

———*Religious endowment—Dedication—Grant to mahant and heirs—Whether grant to idol or temple.*

A grant to mahant and his heirs for services rendered to the temple is not a grant made to the temple or its idol, but it is the private property of the mahant. (*Piggott and Walsh, JJ*) BANARSI DAS *v.* SHEODERSHAN DAS SHASTRI. 45 I. C. 451=16 A. L. J. 394.

———*Religious endowment—Dedication—Revocation.*

Where there is an absolute dedication of property to a deity a subsequent deed cannot affect it nor can the donor as owner revoke the

HINDU LAW—Religious Endowment—Dedication.

dedication. (*Chatterjea and Cuming, JJ.*) SASI BHUSAN BAHADUR *v.* BASANTA LAL BHAR.
54 I. C. 518.

———*Religious endowment—Dedication—General endowment—Worship of God—Deity not named—Void.*

Under the Hindu Law, a general endowment for the worship of God, without giving the name of the deity, for whose benefit the endowment is to operate is void for uncertainty, 11 I. C. 266; 37 Cal. 128; 32 All. 337; 33 All. 253 dist. If such a deed of endowment is not rectified within three years from the date of the execution a shebait named in the deed, can transfer without legal necessity, property comprised in the deed. (*Fletcher and Cuming, JJ.*) CHANDI CHARAN MITRA *v.* HARIBOLA DAS. 46 Cal. 951=
23 C. W. N. 645=51 I. C. 215=29 C. L. J. 366.

———*Religious endowment—Dedication—Proof of.*

Obiter: Dedication will not be proved by mere purchase of an estate in the name of a *thakur* deity. For dedicating property to a thakur a permanent image is not necessary. (*Chaudhury and Newbould, JJ.*) ASITA MOHAN GHOSE *v.* NIRODE MOHAN GHOSE.
35 I. C. 127=20 C. W. N. 901.

———*Religious endowment—Dedication—Accumulation.*

Accumulations from bequests according to testator's directions of surplus income from the debutter estate may create a religious and charitable trust. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) SAROJINI DASSI *v.* GNANENDRA NATH DAS. 33 I. C. 102=23 C. L. J. 241.

———*Religious endowment—Dedication—Object vague—Charity—Void gift.*

Where the trust was for supporting the destitute, imparting education, marrying daughters of poor people and similar objects and discretion was given to trustees to select the object of bounty. *Held*, that the trust was inoperative being vague and uncertain. (*Chaudhuri, J.*) SARAT CHANDRA GHOSE *v.* PRATAP CHANDRA GHOSE.
21 I. C. 194=40 Cal. 232.

———*Religious endowment—Dedication—Debutter property—Partition by shebaits, if changes its character.*

A mere partition of debutter property by the shebaits will not make it secular; the partition may after all be for convenient user for the purposes of the deity. (*Jenkins, C. J. and Chatterjee, J.*) DHARMADAS MANDAL *v.* BEHARY MANDAL. 11 I. C. 947=16 C. W. N. 29.

———*Religious endowment—Dedication—Debutter land—Treating as secular property—Effect of.*

If a certain piece of land is really absolute debutter, the mere fact that the *shebaits* have chosen to divide it as if it was secular, does not alter the true character of the land. (*Mookerjee and Caspersz, JJ.*) BHABATARAM ROY *v.* BEHARI LAL. 10 I. C. 399.

———*Religious endowment—Dedication—Revocation.*

Consent of the family may enable the change of debutter property into a secular one to be made.

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If the property is dealt with as private property the court may find as to whether it is really debutter. 12 C. W. N. 98 Foll. (*Coxe, J.*) TULSIDAS *v.* SIDDHI. 9 I.C. 650=
20 C. L. J. 315 (Note).

———*Religious endowment — Dedication —Evidence of.*

Properties dedicated to the office of granthi of the darbar sahib are inherited by the person who succeeds the office. But properties acquired by the granthi out of his own income and which are not dedicated to the office descend to his natural heirs. Where properties descend from one granthi to another to the exclusion of natural heirs the presumption is that they were dedicated to religious uses. (*Scott-Smith and Abdul Raoof, JJ.*) INDAR SINGH *v.* FATEH SINGH.
59 I. C. 734=1 Lah 540.

———*Religious endowment—Dedication—Temple—Public or private—Test.*

When it is in question as to whether a temple founded by a Hindu is private or public, the general circumstances and any other document as the will and its terms are a better guide than the opinion of certain witnesses. The mere fact that the property was held chargeable with the maintenance of the testator's widow does not render it an imperfect trust. (*Chevis, J.*) LAL CHAND *v.* NAND LAL. 171 P. L. R. 1912=16 I. C 838=
263 P. W. R. 1912.

———*Religious endowment—Dedication—Charity—Bequest to—Void—Estoppel.*

There is no difference between *Dharm* and *Dharmath* and a trust or bequest for *dharmath* is void for vegueness. The property so bequeathed remains undisposed of. An heir of the testator who did some charity out of the property for six years is not estopped from giving it up and questioning the validity of the bequest. (*Robertson and Rattigan, JJ.*) GURDIT SINGH *v.* SHER SINGH.
78 P. R. 1912=63 P. W. R. 1912=
14 I. C. 247=106 P. L. R. 1912.

———*Religious endowment—Dedication—Object of—Note to be extended by subsequent conduct of trustees*—Cypres.

Where the terms of a charitable and religious grant are unambiguous its construction cannot be extended on inferences drawn from subsequent use of the endowment. It is not competent to the trustees of an endowment to alter the original object of the trust purporting to apply the doctrine of *cypres*. 43 Cal. 1085 (P. C.) Foll. The fact that substantial contributions have been made by another class or the public will not justify the application of the *cypres* doctrine by a trustee. (*Abdur Rahim, O. C. J. and Moore, J.*) LODD GOVIND DOSS *v.* GOVIND DOSS. 10 L. W. 559=
53 I. C. 661=(1920) M. W. N. 168.

———*Religious endowment—Dedication—Appointment of vars to carry on charities at temples—Complete dedication—Vague and indefinite—Public trust.*

A Hindu by his will appointed his brother's son as his *vars* to conduct charities at the temples of Tiruvedenthai, Tirukkadaimalai and Tirupathi with the help of his properties. The charity was specified as the giving of thaligais (meals) in the

temples on the Tirunakshatram day but no special allotments were made for the purpose. At the time of the registration of the will before the Regis rar the testator stated that he intended by the will to bequeath the property to charities. In a subsequent suit the testator stated that he acquired properties for charity and intended to make a testamentary disposition in that behalf. *Held*, that the dedication was definite and not void for vagueness or uncertainty. 23 Bom 725 ; 30 Mad. 540 dist. The mention of the word *vars* in the will did not make him the sole owners of the properties subject to the carrying out of the directions relating to charity but constituted him trustee for the charities. 24 Bom 420 Dist.; 37 Mad. 199, Foll. (*Abdur Rahim and Seshagiri Aiyar, J J.*) MUTHUKRISHNA NAICKEN *v.* RAMACHANDRA NAICKEN. 47 I. C. 611=37 M. L. J. 489.

———*Religious endowment — Dedication—Inference from circumstances.*

A dedication to the public may be inferred from a long course of conduct on the part of the founder and his descendants on the one and the public on the other. The appointment of a person as *dharmakarta* in his will is strong indication of the public character of the institution. So also the presence of the stone idols, the employment of archakas to worship, the attendance of worshippers from all castes, etc. (*Wallis, C. J. and Srinivasa Iyengar, J.*) SITARAMANUJACHARI *v.* KANDURI VULLAMMA. (1915) M. W. N. 842= 30 I. C. 822=2 L. W. 858=18 M. L. T. 543.

———*Religious endowment — Dedication — Void —Gift of immoveable properties to a* Chatram *not in existence—Construction—General charitable intention —Cypres doctrine.*

An Indian Christian executed a document whereby he dovoted certain properties of his as endowment for a *Chatram* or *Choultry* purported to have been built at a particular spot for the feeding of *Paradesis*, providing that he should manage it during his lifetime and that after his death those members of his family who were competent to manage should do so. Subsequently he made a further grant of money in the shape of Government securities to the fund, so created but varied the provisions as regards management contained in the previous deeds by vesting the same in the settlor and his daughter for their lives. The *Chatram* in question was never built and the Government securities given to the said *Chatram* under the second deed were even during the lifetime of the settlor, transferred to a different charity the lands beings reserved for the maintenance of the family. *Held*, that as the *Chatram* never came into existence the gift failed. A resulting trust accrued in favour of the settlor and his heirs. There was no general charitable intention clearly made out, and the trust could not be executed *Cypres*. The term reserving the right of management to those members of the family who were competent to manage was void for uncertainty. (*Wallis, C. J. and Coutts-Trotter, J.*) DORAISWAMY PILLAI *v.* SANDANATHAMMAL. 2 L. W. 577= 30 I. C. 225=(1915) M. W. N. 478.

———*Religious endowment— Dedication—Grant.*

The mere fact that certain officers of the temple (grantees of an inam) spent a portion of the income derived from the grant for performing certain festivals in the temple. does not show that the original grant was made for the benefit of the grantee as well as the temple. (*Wallis, C. J. and Srinivasa Iyengar, J.*) SRIRANGACHARIAR *v.* PRANATHARTHIHARACHARIAR. (1915) M. W. N. 531= 30 I. C. 74=2 L. W. 632=18 M. L. T. 122.

———*Religious endowment—Dedication—Share of income—Charge.*

A share of the income from the family properties may be dedicated to a trust and the whole family properties then remain charged with the payment of the amount. (*Sankaran Nair and Spencer, JJ.*) NAGAR DAMODHARA SHANGHOG *v.* RAMAPPAYA. 25 I. C. 399.

———*Religious endowment — Dedication — Presumption.*

In the absence of clear proof of dedication the facts that a village belonged to one Asthan, was held by its Mahant from time to time and was treated as part of the Asthan properties. raise a presumption of dedication either by the original Mahant to whom it was granted or by his successors. (*Stuart and Kanhaiya Lal, A.J.Cs.*) BASDEO BAN *v.* RAM SARAN. 45 I. C. 292= 5 O. L. J. 38.

———*Religious endowment — Dedication—Proof of—Portion of income dedicated to worship of public temple.*

The mere fact that the founder of a temple intended for public worship is spending a portion of his income derived from a certain property for conducting the temple is insufficient to establish that the corpus of the property is dedicated to the use of the temple. 2 Cal. 341 Ref. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) PARAMESHRI DASS *v.* GIRDHARI LAL. 30 I. C. 240= 2 O. L. J. 259.

———*Religious endowment—Dedication—Evidence —Subsequent treatment of property—Effect of.*

Where there was no sufficient evidence that the particular property in dispute was purchased from the income of the Sangah or was dedicated by the founder of the Sangah after the purchase and the succession to it was not consistent with its being endowed property. *Held*, that the land was not part of the endowed property. (*Kanhaiya Lal, A. J. C.*) RAJMAN *v.* BRAHAM SURAT. 26 I. C. 621=17 O. C. 336.

———*Religious endowment— Dedication—Proof of.*

Mere appropriation of the rents and profits to the upkeep of a religious institution is not sufficient proof that the property is endowed. 2 Cal. 311, Foll. (*Lindsay, J. C. and Stuart, A, J. C.*) ABDUL GHAFUR *v.* SHIAM SUNDAR DAS. 17 I. C. 303=16 O. C. 76.

———*Religious endowment—Dedication—Illusory dedication.*

To establish that certain lands are the subject of a valid endowment, public or private, it must be shown that an absolute grant of the lands was made with the intention that the properties should be applied to the purposes of the endowment, that the properties have since the grant been so applied and that the members of the family of the settlor have not treated the property as one the

HINDU LAW—Religious Endowment—Idol.

profits of which were mainly intended to be applied for their own benefit. 15 C. W. N. 125. Foll. The dedication is nominal when there is no proof of the application of the income of the property for the purposes of the endowment and when the whole conduct of the parties is inconsistent with the hypothesis of a valid trust. (*Atkinson and Dass, JJ.*) SIRI THAKUR PARMOD *v.* ATKINS. 53 I. C. 106=4 P. L. J. 533.

Religious Endowment—Idol.

———*Religious endowment—Idol—Party to suit.*

Where property is endowed to an idol, the idol is a necessary party to a suit for pre-emption. Otherwise the suit must fail, a decree cannot be given against a party who is not actually before the court. (*Richards, C. J. and Rafique, J.*) MADHO RAM *v.* JAGAT SINGH. 52 I. C. 18= 1 U. P. L. R. (H. C) 7.

———*Religious endowment—Idol—Ballavachariya Goswamis.*

A Ballavachariya Goswami has a specific interest in the temple idol and other property held by him which is capable of being partitioned and transferred. A gift by the Goswami to another Goswami or his successor-in-office is not invalid or contrary to customs and usage of the cult. (*Richards, C. J. and Banerjee, J.*) GOPAL LALJI *v.* GIRDHAR LALJI. 28 I. C. 715.

———*Religious endowm nt— Idol—Right to worship—Idol belonging to another.*

A customary right to worship an idol belonging to another or a tree standing in a private premises cannot be acquired by the public or any group of the individuals by the mere circumstance of facts of worship being performed by persons who see in that object the abode of deity. No interest or right of management in the property of another be acquired by continued acts of worship being shown to that property. (*Sadasiva Iyer and Spencer, JJ.*) THE SUPERINTENDING ENGINEER, II CIRCLE *v.* RAMAKRISHNA IYER. 39 M. L. J. 151=12 L. W. 193= (1920) M. W. N. 495=58 I. C. 885= 28 M. L. T. 163

———*Religious endowment—Idol—Suit—Wrong description of person representing idol—Effect on limitation.*

A wrong description in a suit of the person repesenting an idol is a mere irregularity or misdescription which can be amended without affecting the limitation for the suit. (*Banerjee, Kramat Hussain and Chamier, JJ.*) JODHI RAI *v.* BASDEO PRASAD. 8 A. L. J. 817= 11 I. C. 47=33 All. 735.

———*Religious endowment—Idol—Bequest.*

A bequest to an idol to be established in future is not invalid in Hindu Law. 37 Cal. 120 (F. B.) Foll. (*Greaves and Panton, JJ.*) SARADINDU MUKHERJEE *v.* CHARU CHANDRA DUTT. 53 I. C. 885=23 C. W. N. 872.

———*Religious endowment — Idol*—Shebait—*Rights of.*

A *Shebait* has every right to litigate for the protection of property dedicated to an idol. It is not necessary to join the idol as party in any suit which the Shebait may launch. 32 Cal. 129 and

HINDU LAW—Religious Endowment—Mutt—Disciples.

31 I. A. 203 Foll. (*Chatterjee and Richardson, JJ.*) DINA BANDHU NANDI *v.* CHAMI JADDI MIJI. 34 I. C. 548.

———*Religious endowment-Idol—Property held by—Nature of—Gift to—Provision for maintenance.*

An idol is a juridical person capable of taking and holding property and the nature of the title is not in any way different from that of a living individual. There is no distinction in this respect between a family idol and an idol in a public temple. 32 Cal. 129 (P. C.); 2 Cal. 341 (P. C.) Ref. to. A gift in favour of a consecrated idol is recognised to the same extent as a gift in favour of a deity in the abstract and can be given effect to even if the gifted property is charged with the maintenance of certain members of the family or of the manager of the trust. The property gifted must, however, be vested in the idol or diety as the case may be, though the donor may retain the management of the same in his own hands. The property gifted to an idol vests in it on the date of the gift even if the donor omits to get mutation names in its favour in his life time. Where an idol is duly consecrated for public worship the invisible deity is considered to reside in it. (*Stuart and Kanhaiya Lal, A. J. Cs.*) SITHA RAMJI *v.* JADUNATH SINGH. 24 I. C. 72= 10. L, J. 204.

Religious Endowment—Management.

———*Religious endowment—Management*—Shebaits *and* Pujaris—*Rights.*

Shebaits of a *Thakur* appointed defts. *pujaris* and gave certain properties for maintenance and worship on condition of forfeiture in case of misconduct to be determined by a special tribunal. Defts. were found guilty of misconduct and were deprived of the properties which were retained by the tribunal. The *Shebaits* sued for possession: *Held*, that the agreement was not affected by the rule against perpetuities nor was it void for remoteness. Though there is no State Church or Ecclesiastical Court under Hindu law, a Civil Court may hold that a *pujari* has been removed from office on valid grounds. (*Mookerjee, A.C.J. and Fletcher, J.*) NAFAR CHANDRA *v.* KAILASH CHANDRA. 62 I. C. 510=25 C. W. N. 201.

———*Religious and charitable endowment—Management—Partition Turns.*

Where at a family partition it was agreed that the charity was to be managed by the eldest members of the various branches, by annual turns. *Held*, that it was a lawful agreement which the courts would recognise and enforce. (*Wallis, C. J. and Hannay, J.*) UMATYORUPAGAM PILLAI *v.* PALANARAYANA PILLAI. 28 I. C. 908.

Religious Endowment—Mutt.

Disciples.
Head of.
Junior head.
Management.
Succession.

Religious Endowment—Mutt—Disciples.

———*Religious endowment — Mutt—Disciples—Permanent lease by trustee—Suit for declaration by—Disciple of Mutt.*